

A New History of Penance

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A New History of Penance

Edited by
Abigail Firey



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Abigail Firey
Lexington, Kentucky 2008

INTRODUCTION

Abigail Firey

Since the project's inception, the title *A New History of Penance* (*NHP*) has been pronounced with tongue in cheek. Readers looking for a magisterial survey of the history of penitential practices and theories in western culture should not expect to find it in these pages. Indeed, contributors to this volume were given the mandate *not* to provide essays that were magisterial in outlook or that attempted surveys of already established interpretations and data. That would be contrary to the intention of this venture, which is to open new questions about the nature of religious penance in the late antique, medieval, and early modern periods in the West. Instead, contributors were asked to select particular topics or materials that had received little or no attention in earlier scholarship on penance and to explore the penitential contexts revealed by their selections. In doing so, a new set of connections and considerations, as well as tests of older accounts, could take shape. There is thus an openness in the very structure of the collection. What might the chronology or periodization of a new history of penance look like? Where should room be left for further investigations? What can reasonably be affirmed, and what should invite readers to reconsider well-worn but inadequately supported assumptions?

But beyond those questions, the openness of the collection reflects that there will, of course, be many new histories of penance because, as these essays show, the variety and complexity of penance—described, prescribed, experienced, conserved, renewed, altered, resisted, embraced—cannot be neatly contained in a single narrative, no matter how magisterial and detailed. The design of the *New History of Penance* as a collection of articles by different authors was not merely a matter of convenience for the division of responsibility but was conceived as a means of scattering the fragments of a narrative, or even fragmenting a narrative that might threaten to congeal. The *NHP* is an invitation to others to imagine new ways to piece together new stories, to find material that might be inserted in the interstices of the partial pattern the authors have set forth here, and to wonder what else has been forgotten or neglected in older accounts.

Adding to the implicit irony of the title is the fact these essays are indebted to a rich and accrued corpus of scholarship belonging to an imagined “old history of penance.” Part of the amusement for readers will be to identify the elements of old history embedded in the new and to detect the sometimes subtle shifts that transform old into new. Each contributor’s subscription to claims of the older narratives varies, however, and another respect in which there is no consolidated “new” history of penance is that this collection presents tensions and contradictions among the included essays. Again, dialectic is the goal: readers should pause and consider the eruptions of disagreement and inconsistency. In some instances, they represent different degrees of departure from normative interpretations; in other instances, they suggest that normative interpretations can be supplemented with other perspectives that enrich and complicate the story.

Haunting a number of the essays is the perhaps most oft-cited text in the history of sacramental penance, the decree of the Fourth Lateran Council (a. 1215), known by its opening words *Omnis utriusque*: “All the faithful of either sex, after they have reached the age of discernment, should individually confess all their sins in a faithful manner to their own priest at least once a year, and let them take care to do what they can to perform the penance imposed on them.”¹ Yet the authors of the *NHP* do not present the Fourth Lateran Council as the defining moment in the history of penance. Instead, they provide contexts and vantage points that both illuminate the sense of the canon and also integrate its formulation into a set of practices, precedents, and interests that appear to be the more important contours of the story. R. Emmet McLaughlin finds the historiographic instigation of the “mythic importance” of Lateran IV and the pope who convened the council, Innocent III, in the debates taking place among Catholics in the 17th and 18th centuries. Wietse de Boer also sees the ignition of attention to *Omnis utriusque* in the early modern period, because of Protestant attacks on the text. Dominique Iogna-Prat reads the canon in its context in the medieval documentation and observes that it is placed in the text among canons pertaining to ritual purity. Joseph Goering reads the canon as a guarantee that Christians seeking to make confession

¹ Norman P. Tanner, *Decrees of the Ecumenical Councils*, 2 vols (London and Washington, D.C., 1990), 1:245.

would have the opportunity to do so and that priests must know their duty to provide that opportunity.

That caution in handling official decrees and documents as definitive, normative, or transparent indicates an interest evident in many, if not most, of the essays of the *NHP*. Authors are eager to understand the experiences and interests of the penitents themselves and of the audiences that witnessed and pondered penitential endeavours. Orienting much of the investigation around the penitents has produced an intriguing tension with another perspective that also appears in these pages, the story of penance as a form of social control. By probing both the penitential impulses among “ordinary” (as well as extraordinary) penitents and also the institutional organization and supervision of penitential activities, the contributors have begun to trace a complex history of diverse interests, competing forces, common causes, complicit agents, destabilizing visions, and human failings. In some instances, institutional direction was challenged by penitents and confessors who performed their roles in ways unprescribed and unrecognized in ecclesiastical juridical literature. Thus, in late antiquity, the penitents described by Kevin Uhalde and Claudia Rapp are “holy penitents” whose devotions are assisted by “spiritual guarantors” and whose place in society is recognized with reverence rather than revulsion. As Uhalde puts it, “penance was simply too important to be left to professional penitents and criminals.” The honour acquired in the penitential state is also illuminated in Jodi Bilinkoff’s descriptions of the female penitents in both the Old and New Worlds in the 16th and 17th centuries whose confessors transformed them into celebrities by collecting and publishing their writings, testimonies about them, and the knowledge they, as their confessors, acquired. Ronald K. Rittgers draws attention to how the value attached to suffering by Luther influenced Lutheran measures to find modes of retaining and enhancing penitential confession without using the sacramental system of the Catholic Church. Yet these creative ventures in the expansion of penitential conduct invited critiques, and not always from the clergy. Countervailing pressure to conform to institutional forms of penance shapes the medieval romance *Monodiae* by Guibert de Nogent (1053–1124), argues Iogna-Prat: the protagonist’s self-medicating choice of humility, isolation, and social marginality as a charcoal-burner is challenged, in order to guide readers to a “better” understanding of appropriate penitentialism within standard institutional forms. Similarly, both laity and clergy protested the innovations in penitentialism advocated by the archbishop Charles

Borromeo; other early modern rigourists, such as the Jansenists, were considered heretical.

Such research represents disengagement from the thesis that a largely coercive power drove pre-modern penitential activity, a thesis that proposed, as McLaughlin puts it, that “fear of punishment alone could explain the success of penance.” That disengagement opens further avenues for exploring the ways in which penance channelled social and political power. Uhalde’s argument that late antique penance was not a full “social death” and Karen Wagner’s observation that in the central Middle Ages “penance was done for and with, not to someone” prepare the foundations for the exercise of power by penitents in the early modern period. Gretchen Starr-LeBeau recounts how penance was a means in the 16th century for lay people to protest against authorities by holding the religious welfare of a community hostage, and she explicates the procedures for confession in Guadalupe as a forum for dialogue between confessors and penitents. As she points out, since friars governed Guadalupe, confession provided a peculiar experience of self-revelation to one’s secular lord and also provided an opportunity for carefully crafted complaint. The social and political power attached to the penitential process could also be appropriated for reformation of the polity by a governing power, as in the case of the Calvinist Consistory, which, in its quest for the suppression of public sin, insisted on public contrition as both a penance and means of reconciling neighbours. My essay proposes that the processes of royal inquisition and sacerdotal interrogation of penitents in the Carolingian era may have converged, rather than run parallel—and yet, as has been well-demonstrated by scholars, royal penitents are prominent in the Carolingian landscape. The question of how to situate penitential exercises in the context of secular government is perhaps one of the most pressing for further research.

The complexity of the dynamics of power in the relationship between penitents, confessors, and those directing both arises, these essays suggest, from often very blurry distinctions of personnel, form, and intent. Clerics did penance; “even saints did penance” (Wagner); the penitents described by Bilinkoff provided to their confessors extraordinary access to divine mysteries; the “orders” of penitents and religious, Uhalde tells us, were not distinct. The rituals of penance resembled those of baptism, of the consecration of churches, of ordination, and of exorcism, as Rapp, Wagner, and Iogna-Prat show. By entering those indistinctly bounded areas, the investigations of the *NHP* find depth

and resonances in the penitential experience hitherto unexposed. Rapp shows how distinctions between penitent and confessor were consciously eradicated by ritual gestures that made clear that the confessor was assuming the guilt and grief of the penitent, and she reveals that the bond of participation in penitential action could even extend to vicarious performance of penance for another. The bond was not simply affective: Rapp argues that it signified a suretyship, a personal guarantee such as those offered by spiritual guarantors in other rituals of the late antique Church in the East, such as baptism and ordination. Iogna-Prat also draws attention to the sacral connections between penance and other rites: he notes that within the sacred space of the church walls, where baptisms occurred, penitents were reconciled. The trope of “penance as a second baptism,” well-rehearsed in older accounts of the theological rationale for the sacrament, gains new force in this context of rituals that bring the previously stained into a purified community of believers. Pursuing the issue of permeable boundaries between rites even further, Iogna-Prat proposes that the purification of buildings (as in the consecration of churches) and sites (as when the crusaders “purified” Jerusalem upon their entry) should be considered with reference to the purification of individuals conceived in medieval discourse as stones of the living temple. In these metaphors of suretyship and living stones is an insistence upon the communal cohesion of believers and the penitents among them, and that account complicates further our ideas about penance as an exclusionary device and as an interaction between priest and confessant alone. The importance of collective penitential activity in the confraternities of the later Middle Ages is signalled by Starr-LeBeau. Even the routine recitation of the *Confiteor* by congregants during the Roman Mass since the 9th century is also invested with a simultaneously personal and communal avowal of sinfulness, notes Iogna-Prat.

All these group and vicarious activities complicate the distinction beloved in older accounts of penance between the private (or secret) and the public enactment of confession and penance. McLaughlin identifies the concern over privacy as a modern preoccupation. Others note the late advent of the quintessential symbol of the privacy of confession, the confessional box, which, although introduced in the 16th century, did not become fully enclosed until the 18th century (de Boer). As Rob Meens’ account of scholarly debates over the public-private dichotomy in penance shows, a number of scholars have recently pointed out that “private” penance, with its telltale changes of behaviour, would not have

been secret in the small communities of the Middle Ages. The narrative of a complete shift from public rituals of penance in late antiquity to rites of private confession in the early Middle Ages and thereafter has also been widely challenged.

But the contributors to the *NHP* disrupt even further the traditional definitions or preconceptions regarding practices of private penance. The homey image of private confession, with the confessant and confessor in quiet colloquy, heads bent together, must be juxtaposed to that most impersonal, bureaucratic, centralized, and juridical of penitential institutions, the Apostolic Penitentiary of the Roman Catholic Church, where modern researchers tread delicately around the seal of confession in order to help us understand how internationalized the standards and expectations for resolution of individual and particular penitential needs had become after the 12th century.

In yet another twist in the narrative, the early medieval penitentials, long endowed with symbolic meaning almost as definitive as that of the confessional box for representation of “private” or “secret” practices of confession and penance, prove to be useful for their illumination of later medieval and early modern debates over private confession. De Boer recounts that Borromeo instructed confessors to “confront” their penitents with a selection that he had published in 1573 of canons derived from early medieval penitentials. Rob Meens traces the historiographic trail of the legendary “Roman” penitential and shows how the archbishop Antonio Agustín, one of the central figures to execute the program of the Council of Trent, also published in 1582 *Canones paenitentiales* from a medieval (albeit 12th-century) text. Both Meens and McLaughlin show how the 17th-century Oratorian and converted Protestant Jean Morin defined subsequent histories of penance: Meens discusses Morin’s publication of a portion of a Carolingian penitential; and McLaughlin points to Morin’s interest in “traditional” and public forms of penance as suitably rigorous practices compromised by later medieval casuistry and indulgences. Although Meens describes Morin as “untainted by confessional prejudice” and McLaughlin calls Morin “the first true scholarly historian of penance,” it is an interesting exercise to read Morin’s work in the context of the tumultuous debates of his times, debates that often engaged with the historicity of private and public confession. As part of its defence against Protestant charges that private confession to priests was an unholy invention of the Fourth Lateran Council, the Council of Trent (1545–63) had decreed,

For the rest, with regard to the manner of confessing secretly to a priest alone, though Christ has not forbidden anyone to confess his sins publicly—in expiation for his offences and in self-humiliation, both as an example to others and for the edification of the church which has been offended—yet this is not commanded by divine precept, nor would it be really well-considered to enjoin by human law that sins, especially secret ones, must be revealed by public confession.²

Another departure from the traditional frameworks of situating early medieval penitentials in a grand narrative of private (as opposed to public) confession is Rapp's description of the Greek penitential texts of the eastern Roman empire, which may offer tantalizing parallels to the notorious "tariff penitentials" of the early medieval West.

The early modern theological polemics over public and private were recast in some 20th-century scholarship as a dichotomy between the exterior and interior lives of individuals, between social and spiritual existences. The narrative of an emerging interiority, or an historically constructed individualism, placed by McLaughlin in a tradition of modern liberal historiography, seems to be almost unanimously rejected by the contributors to the *NHP*. Those writing about late antiquity and the early Middle Ages see all sorts of evidence for curiosity and solicitude about the inner life of the penitent, and those writing about the later Middle Ages and the early modern period are intrigued by the external postures and conformity to prescribed norms. In one of the most explicit rejections of the interiority thesis, Joseph Goering writes that,

The major development in the history of penitential thought during the years between 1100 and 1500 is not the dismissing of rigid penitential tariffs, or "the discovery of the individual" or the "rebirth of conscience." The most important development, it can be argued, was the creation throughout Europe of schools and universities where students were introduced to a common tradition through a common curriculum of study, and where they developed common methods of thinking about and teaching about penance.

Taking an approach different from McLaughlin's historiographic genealogy of intellectual trends, Goering looks to the treatises of the medieval scholastics and finds categorization of traditions treating "virtue of the mind" and external satisfaction. When this distinction—initially a means of understanding the efficacy of penance by balancing the demand

² Tanner, *Decrees of the Ecumenical Councils*, 2:707.

for genuine remorse and the mechanisms for expressing that remorse to a priest and making satisfaction—was employed by Peter Lombard (c.1100–c.1164) as a way to help students understand sacraments, penance came to be recognized as a sacrament. From Lombard’s academic precision and enquiries, “almost all of the later disputes about penance and its history can be seen to arise,” suggests Goering.

The influence of intellectuals on the history of penance threads through the essays of the *NHP*, but again, there is a turn away from according intellectuals definitive, normative, or transparent status. Neither is Thomism the *telos* nor, as in McLaughlin’s description of Morin’s historical account, are scholastics among the villains. The essays here attempt to situate learning and literacy in a larger social and historical context. Thus, H. Ansgar Kelly’s essay on the intensely academic treatises by the Cambridge scholars John Burgh and William Lyndwood exposes both the long and complex sequence of juridical and theological texts that preceded and shaped their works and also the ways in which such theological and juridical knowledge is refracted in the popular literature produced by Chaucer. Other contributors find in late antique and medieval recourse to biblical verses valuable clues to the ways in which penance was imagined and taught. Uhalde shows how authors saw in the exile of Adam and Eve from Paradise a template for the penitential process, from sin to promise of salvation, a reading dramatized in the liturgy prescribed around 1100 for the exclusion of penitents from the Church (Iogna-Prat). The figure of Judas, Uhalde observes, offered the image of a failed penitent. Iogna-Prat follows the commentaries of medieval authors from Bede (d. 735) to Robert Grosseteste (c.1175–1253) on the meaning of the Temple as a set of measures, standards, and structural elements for Christians to match. Extra-scriptural traditions also enlarge the collection of images and tales known to penitents and witnesses: the image of the devil in the tribunal of judgement passed on the sinner offered in the 6th century by Caesarius of Arles (Uhalde) also figures large in Carolingian treatises on penance (Firey).

However great the difference in learned discourse regarding penance after the 12th century from what had gone before—and even in the new history, the transformations are evident—the recurrence over the centuries of images, tropes, and referents such as those noted above suggests a substrate of ideas about penance that continued to anchor, to one degree or another, penitential theory and practice. Prescription of “the seven penitential psalms” (Ps 6, 31, 37, 50, 101, 129, 142)

extends from late antiquity (Uhalde) through the Middle Ages (Wagner) and was so well established in the early modern period that Jews shaping penitential rites under the pressure of conversions to Christianity appropriated the sequence into their own penitential regimes (Starr-LeBeau). (One might note that the seven penitential psalms are now widely posted on websites.) Even the image of the “treasury of merit” from which others may draw to compensate for their sins—that most castigated of late medieval constructs for the explanation of the efficacy of vicarious penance, suffering, and virtue—is shown by Claudia Rapp to have antecedents in late antique descriptions of penance.

The images of penance may communicate important information not only about what Starr-LeBeau calls “the logic of penance” but also about the nexus of western penitentialism and other spheres of civic life. Rapp’s argument about the use of legal and financial language in explanations of penitential action is tightly connected to contracts for agricultural labour and thus presses the question of where the border between analogy and a perceived reality lies. When real property is involved in penitential transactions, the question becomes even more pointed. Similarly, my investigation of the image of the court of conscience and its possible implications for legal proceedings in the Carolingian empire and even in later western law suggests that images can present a passage between concept and reality and can provide frameworks for the construction of realities.

Yet images and referents assume different meanings in different historical contexts, and a new history of penance must both recount and account for the changes in meaning assigned to seemingly familiar citations. Rittgers’ essay reminds us that Luther’s rejection of a traditional explanation of the power of the keys (derived from the biblical verse Matt 16:18–19, “Thou art Peter, and upon this rock I shall build my Church . . . and I shall give you the keys to the Kingdom, and the gates of hell shall not prevail against it . . . Whatsoever you bind upon earth shall be bound in heaven, and whatsoever you loose upon earth shall be loosed in heaven”) produced a radically new vision of the form and function of penitential confession. In the Lutheran transformation of the power of the keys into a promise of forgiveness as a gift of grace (as opposed to works), and with a description of grace as the treasury of merit, the keys fell from priestly hands, and suffering ceased to have purgative effect. In both Lutheran and Anglican congregations, however, even when priests did not have the power to absolve, the practice of confession to a pastor continued as an important spiritual exercise.

The religious turmoil and variety of the early modern period is neatly reflected in the references to the power of the keys. Charles Borromeo devoted more than a quarter of his highly influential *Instructions* (the *Avvertenze*) to diocesan confessors to the power of the keys. Torstein Jørgensen explains how Catholic interpretations of the keys provided the theological basis for the creation of the Apostolic Penitentiary, where the power of the pope, as holder of the keys, was delegated to the official running the Penitentiary, thereby “institutionalizing the granting of grace.”

Luther’s arguments regarding the distinction between guilt [*culpa*] and penalty [*poena*] had been framed centuries before in scholastic discussions that proposed that “absolution applied to the penalty and not the guilt incurred by sin, since only God can forgive sin” (McLaughlin), and thus show an intramural aspect of the debates in the Christian communities of early modern Europe. The introduction of Christian penitential practices to those who were not Christian, however, illustrates with particular sharpness some of the implications of situating images and texts in circumstances other than those in which they were conceived. Both textual knowledge and the performative dimensions of penance created new problems and tensions in the implementation of transplanted traditions. Starr-LeBeau’s discussion of Franciscan efforts to translate, quite literally, penitential education into indigenous languages such as Nahuatl in Mexico shows how the much larger view of the workings of the cosmos conditioned understanding of sin and means to repair its damages, and how the experience of missionaries eventually led to a new debate over the efficacy of using indigenous terms for concepts that were perhaps inseparable from the terminology used in long-established Christian communities. Oddly enough, the description of the Nahuatl sense of sin as “something damaged,” where perhaps, Starr-LeBeau suggests, the damage is the more salient feature than the cause, resonates with many scholarly accounts of early medieval perceptions of sin, which find their voice in the anthropological analyses of purity and filth (Meens) and which have supported some of the narratives of a transition from external to internal sites for pastoral ministry. The cultural particularity of rituals troubled early modern Christian evangelists as well as modern scholars, as they struggled to determine what it was that valorized Christian confession to a priest, in contrast to Inca confession to a “sorcerer,” and whether the rites of ancestor veneration in China could be conducted alongside Christian sacramental rituals. If meaning was so tenuously conveyed in

ritual practices, could Christian confession and penance delivered in an alien context actually promote theological error? In contrast, Bilinkoff's exposition of the enthusiastic publicity accorded to Christian penitents in the New World shows the use of the new technology of print both to feed confessional polemics to and from Europe and also, she suggests, to validate the religious authenticity of new polities and place them on equal footing with Old World countries. The female penitents she describes were sometimes presented as symbols of regional and national virtue, even glory.

Thus penance could also have enormous significance as a visible sign of confessional identity and piety. Wagner's point that penance was not only sacramental but also didactic extends, as she shows, to the point that penitential confession provided an opportunity for didactic examination on doctrine. Did the penitent believe in the Trinity and the Last Judgement? Did the penitent know the Creed and the Lord's Prayer? These questions from liturgical instructions of the mid-10th century were the precursors of the confessionally freighted queries of the 16th century, when, as Rittgers puts it, confession might be an examination of faith rather than of conscience. The chits disbursed to 16th-century Catholics in Milan so that they might display them in order to receive the Eucharist (de Boer) and the 1530 declaration of Lutherans that confession was a necessary pre-requisite to communion are not dissimilar, however different the Catholic and Lutheran premises for the place of confession in the spiritual life of the Christian. Between those 10th-century and 16th-century scenes was the education in penance that Goering and Kelly present. It was an education in soul-searching, yet it also contained the seeds of volatile debates that would ultimately lead to violence. As Goering points out, ideas that were unproblematic, academic ventures in the classroom became, when transposed to the streets, highly problematic.

The potential for penitential education to shape the individual religiously and the potential for the rite of confession, linked to permission to participate in the public rite of communion, to allow verification of the confessant's religious views, connected the confessant and the polity. The theme of moral discipline seems especially prominent among the scholars of the early modern period. Although Protestants rejected the Catholic theology of penance because of the implication that good works, rather than pure divine grace, assist in salvation, nevertheless Luther's representation of penitential suffering should be viewed in the context of his interest in reform of popular piety, argues Rittgers; hence,

in the view of some scholars, even Lutheran confession was shaded with interest in moral discipline. Among Catholics, moral disorder was often associated with heresy, and so confessors had a role in watching for signs of disordered belief. The long and complex history of inquisitions and their connection to the practices of confession and penance is mentioned in several of the *NHP* essays: de Boer notes especially the efficiency of the early modern Roman inquisition in using penitential documentation for surveillance of both clergy and laity; Iogna-Prat and I consider the relationship between secular inquests and enquiries made of penitents as incipient forms of later inquisitions that welded political and religious interests. Penitential actions could signal civic orderliness in a number of ways. In early modern Guadalupe, when local uprisings were quelled and peace restored, collective penance on the part of the townsfolk and a pardon granted by the prior provided a penitential liturgy to express political order, a liturgy accompanied by oaths of obedience (Starr-LeBeau).

It was not only the forms of the interrogations of conscience that show the importance of penitential education in the West. The content of that education regarding the purpose and efficacy of the penitential experience also provoked heated debate. Most well known are the disputes over teachings regarding channels for divine grace and mercy, especially absolution and indulgences. These subjects had exercised theologians and jurists for centuries before early modern confessional polemics hardened the debate into nearly non-negotiable doctrinal positions. In the *NHP* essays we see that the pronouncement of absolution at the conclusion of the rite of penitential confession as an invocation or imprecation petitioning God for mercy in the 10th and 11th centuries (Wagner) became a subject of academic enquiry in the medieval universities, when it was asked whether it might be a declarative statement that the sinner, through his confession and by the power of the keys, has obtained God's mercy. Was it, in seemingly ever-popular academic parlance, a sign or a signifier? Both forms of the pronouncement of absolution persist in present-day Catholicism (Goering), and it might seem that Luther's formulation that private absolution represented a promise of forgiveness that should bring joy amidst suffering (Rittgers) is a readily comprehensible continuation of earlier attempts to understand absolution. Medieval expertise in what might be called the problematic of absolution is evident in the treatises of Burgh and Lyndwood, which not only treat the question of whether absolution has effect on an unrepentant sinner but also pursue the

question of whether women who set fire to churches must go to the pope for absolution. Questions of social discipline take on a new flavour in the discussions of the conditions required for absolution of pirates and those who sell arms to Saracens.

Just as absolution could be fraught with technical complexities, so could indulgences. Although often treated in older histories of penance as a later medieval and early modern phenomenon that scandalized reformers, Iogna-Prat recalls that even in the Roman empire there were indulgences, legal amnesties. The association of special graces gained by special participation at sacred events, such as the consecration of churches and cemeteries, fostered devotional gestures, such as laying the first stone for a church, by sinners hoping for such graces and amnesty. From such gestures of humility, labour, and seeking proximity to the holy came the elaborated and expanded set of opportunities to gain spiritual rewards, through pilgrimages and donations. As noted above, the economy of salvation and the economies of worldly goods could become entwined in penitential efforts. Indeed, for scholastics accustomed to an intellectual environment where the study of Roman law was paired with the study of canon law, it was conceivable to apply civil law to fraudulently given or received religious donations (Kelly). The potential for scandal, of course, was inherent in the mingling of worldly and sacred transactions. The paradox of indulgences was that although intended to convey mercy and grace, they scandalized reformers such as Luther, for whom sacramental forms detracted from faith in the power of grace. Indulgences seem to him a means to discourage suffering (Rittgers); traditionally, they were signs of grace attached to special efforts to be present at sites commemorating suffering, such as the repositories of relics, or possibly to illnesses or adversities perceived by the sinner as spiritually purgative.

The questions raised about absolution and indulgences reflect deep uncertainty regarding human agency in dispensing divine grace and mercy. That uncertainty runs through centuries of pondering the roles of bishops, priests, monks, mendicants, missionaries, and laity in confession. The figure of the confessor attracted hopes and fears: was he a specially gifted spiritual assistant and advocate, or a disciplinary interrogator, or a cunning confidence man? Was he a personal friend invested in the confessant's personal welfare, or an impartial assessor of culpability? What powers, both civic and metaphysical, did he have? Was he "a threat to individual liberty, manliness, national independence"? Or was he a source of consolation to those in anguish? Such questions

varied with the times; they are bound to larger narratives and perceptions of the strengths and weaknesses of religious institutions. What becomes clear, however, is that a linear history that depicts an initial era of penance administered by bishops and bishops alone, followed by an era of transition resulting in penitential confession to parish priests and leading to an era of controversy, reform, and—except for Catholics—rejection of sacerdotal directions to penitents, is flawed in almost every respect. A new history of penance needs to encompass an extraordinary range of penitential encounters between confessants and confessors. The variety of experience arose in part from lay impulses as well as institutional development. Rapp argues for late antique penitents finding means of organizing guilt and expiation in extra-hierarchical patterns; Goering's reading of *Omnis utriusque* places penitential desire among the laity as the impetus for ensuring that there are institutional means of delivering the sacrament of penitential confession; Bilinkoff's penitents have relationships with their confessors that are far outside the box of the confessional, and most of those confessors were Jesuits or in the mendicant orders, rather than parish priests or bishops.

While there is thus evidence for considerable fluidity and imagination in the formation of penitential exercises, there is also evidence for ongoing debate over the institutional administration of penitential rites as they became normalized. The question of whether the presence of a priest was necessary persists in various forms throughout the centuries. Since that question was framed as an alternative to the question of whether confession to God alone suffices, related questions about how to test the authenticity of penitential confession also prompted debate that became, in the view of some, excessively refined in the scholastic distinctions between the sense of fear underlying confession (attrition) and the full and fruitful remorse that validates penance (contrition), a complicated distinction explained by Kelly. Although the disputes over attrition and contrition may appear unattractively technical, it is helpful to remember that they represent efforts to analyse what the penitent brings to confession and, therefore, what the priest brings to confession. They are thus part of a larger discussion of sacerdotal authority, its limits and utility. The more explicit debates over sacerdotal authority also recur over the centuries and often are signalled by their focus on whether priests could assign penances at their own discretion [*arbitrium suum*]. The early medieval penitentials are often read by modern scholars as written directives to be used by parish priests in prescribing penances (Meens), although I argue that there are signs

of debate in the Carolingian period over whether priests should apply written standards or determine penances according to their own judgement. The central text for learning canon law in the 12th and 13th centuries, Gratian's *Decretum*, moderates the dilemma by saying that when a penance is not specified in canon law, then priests exercise their own judgement; the Lombard sees confession to a priest as a means of allowing the priest to better judge the sin and penance (Goering). The question of sacerdotal judgement also anchored historical descriptions of penance: Morin seems to have been troubled by the thought that "arbitrium suum" meant that priests were assigning "arbitrary" penances after the 13th century, and modern historians turning to the medieval handbooks for confessors, the *summae confessorum*, as sources for the history of penance also grappled with the issue of penitential standards, relative rigour or laxity, and priestly authority over the lives of their confessants (McLaughlin).

The *New History of Penance* juxtaposes those concerns regarding priests and books with other aspects of the expectations for episcopal and sacerdotal conduct in administering penance. Tempering their role as judges, however great or reduced their discretion, are frequent references across the centuries to their duty to engage in the sorrow and remorse of the penitent themselves. From the shared or vicarious contrition described by Rapp, to the stipulations noted by Uhalde that the confessor must experience remorse, to Wagner's observations that the confessor had a demonstrative role and was also beseeched for intercession and prescriptions, to the almost inverted paradigm of spiritual guidance and instruction offered in Bilinkoff's study of hagiographies of penitents, the terms of clerical authority are complicated. Additional ramifications arose from tensions and competitions within the ecclesiastical hierarchy over penitential jurisdiction. *Omnis utriusque* may have designated parish priests as the primary agents in the penitential machinery, but bishops were at times interested in preserving or strengthening their oversight. There were rules for confessors to follow, and an aggressive bishop such as Borromeo could issue rules of considerable import. Borromeo's measures to control and regulate the penitential process included the use of an approval form for confessors and a written list of approved confessors—devices for bringing confession and penance under episcopal control, even if the confessors themselves were priests. Juridical specifications of the distribution of reserved sins—which cases had to go to the bishop and could not be remitted by the priest, which cases could not even be remitted by the bishop but had to go to the

Apostolic Penitentiary, detailed by Kelly—imposed further restrictions on the authority of parish priests. As reserved cases sent to the papal court were resolved and decisions sent back to those awaiting them, bishops were the gateway in the return to local administration and were required to give final review and confirmation as the final stage of the process (Jørgensen).

It is noteworthy, however, that so many other clerics were involved with penitents. While standard accounts of the history of penance drew attention to the influence of the monk John Cassian (c.360–c.435) and his theories about medicinal remedies for the vices that corrupt the soul, the new historians of penance construe the penitentialism of the monastic and regular orders as a vast landscape through which sometimes laity and secular clergy proceed *en route* to their penitential destinations. Even the 6th-century cloister looks different than its often romanticized depiction as a place of penitential stasis. In the *NHP*, a group of dead nuns arises from the church to withdraw from the celebration of the Mass because they are unshriven (Iogna-Prat). Kings and queens flowed into monasteries for periods of penance. The monastery was a place of both exile and immunity for penitents. What transpired in those monastic sanctuaries is largely invisible to us, although the increase in their size and prestige, as Iogna-Prat sees exemplified in Cluny, indicates their importance as houses of reconciliation.

More visible are the activities of the unenclosed regular orders. While at times there may have been competition among the ministries of Dominicans, Franciscans, and the secular clergy, the *NHP* also shows the intermingling and cooperation between clerics of varying professions: the Apostolic Penitentiary drew upon the services of “minor penitentiaries” who were often mendicants and who might then go on to become bishops (Jørgensen). The Jesuits played an important part in developing penance as a discipline for the formation of the soul, and they could thus be natural allies to episcopal proponents of increased penitentialism, but they could also oppose pastoral measures that they considered inappropriate (de Boer). The missionary agenda of the Jesuits placed them at the forefront of penitential education in Latin America, New France, and China (Starr-LeBeau), as well as in the centre of disputes in Europe over the proper balance of discipline (or “rigour”) and compassion (or “laxism”) in penitential instruction (de Boer). Many of the biographers (or hagiographers) of the early modern penitents were Jesuits, and Bilinkoff sees in their work not only efforts at moral edification, especially of elite women who might indulge in

the vanities of this world, but also the formation of a spiritual community, as authors communicated with one another, celebrated saints among the Jesuits, and publicized family members and patrons. There is a strong echo of the celebrations made since late antiquity of the “desert Fathers and Mothers,” those Christians who settled in the deserts of Egypt and Palestine in the 4th and 5th centuries, both in monastic communities and as solitaries. Whether the subject was the Carmelite nun publicized by the Jesuit Vincenzo Puccini or the wandering hermit in Mexico whose biographer was inspired to move to the hermitage to join him, the texts recollect the theme that a life of voluntary hardship, humility, and separation from normal society can yield special spiritual rewards, “raptures and revelations” (Bilinkoff).

The counterpoint to penitential sequestration is penitential travel, and the *NHP* shows penitents again breaking out of the domesticated patterns of auricular confession to undertake pilgrimages. The quest for a view of the divine continued from late antiquity onward; throughout the Middle Ages and the early modern period, penitents, or those wishing to see penitents, travelled, or processed, or gathered for collective protestations against sins. The larger world thus was trod by the penitential feet of those seeking new ways to find their consciences and examine them. It was the pressure of the numbers of penitential pilgrims to Rome that is credited with instigating the Apostolic Penitentiary to handle their petitions, and the 15,000 supplications that the Penitentiary handled during the six years of the papacy of Pius II in the mid-15th century attest to the sense of need, whether pragmatic (as in the case of a homicide who needed absolution in order to become an abbot) or as a release from the torments of guilt (Jørgensen). The penitential pilgrims, to use the language of Iogna-Prat, inscribed penance in space; they moved through and into the landscape of Europe as sacralizing forces, commemorated in Arthurian romances peopled with mystical hermits, fishermen, charcoal burners, and in Chaucer’s tales of jolly, bawdy, adventurous, religious tourists.

Perhaps it is the pilgrims who are emblematic of the *NHP*, for they both created and were vulnerable to unexpected penitential experience. It may be that the surprise of this new history is the extent to which it is pervaded with joy and liveliness, with quarrelling and fury, with anguish and celebrations, with stern discipline and radical actions, with isolation and exclusion, with reconciliation and sympathy, with systematization and imagination, with hope and fear and curiosity and care for the souls of others. The common touchstone of the essays, however, has

been the tears. In the liturgies displaying penitential weeping, in the academic treatises analysing penitential weeping, in the theology of a “baptism of tears,” in the remorseful penitents that we know sought voice in penitential confession, in the efforts to bring tears to dry eyes, the contributors have brought to us, washing over the centuries, the sound of the weeping of hundreds of thousands of penitents. Let this *New History of Penance* be a tribute to those who have recognized the wrongs of this world, and to those who have wept.

TRUTH, TRADITION AND HISTORY:
THE HISTORIOGRAPHY OF HIGH/LATE MEDIEVAL
AND EARLY MODERN PENANCE

R. Emmet McLaughlin

The historical study of sacramental penance from the 12th to the 18th centuries has been driven by confessional apologetic and intra-Catholic theological politics. While the importance of confession for Martin Luther (1483–1546) has made it a lightning rod of confessional polemic, competing parties within the Catholic Church have used the “tradition” to support their agendas for the sacrament. All have interpreted history to harmonize with a theological vision of penance. Surprisingly, perhaps, the same issues continue a sometimes subterranean existence in even the most modern scholarship. For despite the distortions, we owe most of what we know about the history of penance to the fervour of the faithful, the heightened theological awareness of the zealous, and the insights of the empassioned.

The High and Late Medieval Historical Perception of Penance

The 12th and 13th centuries had only a limited sense of the historical change that the sacrament was undergoing.¹ Both scholastic *summae* and more humble manuals of instruction grappled with the stringent, set canonical penances inherited from the early Middle Ages. Those penalties were usually accorded sacred value as the “authentic” penances,² but in the same breath they were implicitly (sometimes explicitly) cast on the scrap-heap of history. “*Hodie*” things were different because people

¹ This was in line with the other sacraments. See J. de Breitenbach, *Perutilis repetitio famosi c. omnis utriusque*... (Leipzig, 1493), p. Fiii^r on communion; and Guido de Monte Rocherii, *Manipulus curatorum* (Cologne, 1480), p. 47, on clerical marriage. See also Angelus Carletus, *Summa angelica de casibus conscientiae* (Venice, 1487), p. 162^v, on indulgences.

² Angelus Carletus, *Summa angelica*, pp. 53–53^v. Johannes Auerbach, *Summa de auditioni confessiones* (Strassburg, 1475), unpaginated.

were weaker³ or because the canons did not provide enough flexibility to address “modern” life.⁴ The historical vision was an ambivalent one. On the one hand, the Fathers lived in a time of much greater sanctity and rigour, a golden age. On the other, modern laws and scholastic speculation allowed a more sophisticated and sensitive treatment of sin and the sinner.⁵ Although some opposed these trends, their proponents could appeal to a decretal of Innocent III (1198–1216) that declared penances “arbitrary,” that is, subject to the individual judgement of the confessor.⁶ It was the most consistently quoted tag in all the advice given confessors.

In contrast to the canonical penances, public penance seems to have undergone no change at all. Instead of seeing historical development,⁷ the manuals sought to make sense of what they took to be three different forms of penance: public, solemn, and private.⁸ All three were believed to have existed in parallel from the beginning.⁹ *Omnis utriusque sexus* [every [believer] of both sexes] also enjoyed no special historical value for the manuals, although some authors were aware that annual confession replaced a more demanding required frequency.¹⁰ They invariably cited it to establish the legal prescription of annual confession and Eucharist. At the same time, some 13th-century theologians, though not Thomas Aquinas (1224–74), were aware that the form

³ Angelus Carletus, *Summa angelica*, p. 52^v.

⁴ Andreas de Escobar, *Modus confitendi* (Augsburg, 1511), pp. c^v–cii, cii–cii^v. Angelus Carletus, *Summa angelica*, pp. 53–53^v.

⁵ Angelus Carletus, *Summa angelica*, p. 251^v.

⁶ Guido de Monte Rocherii, *Manipulus curatorum*, p. 110. For opposition: Robert of Flamborough, *Liber poenitentialis. A Critical Edition with Introduction and Notes*, ed. J. J. Francis Firth (Toronto, 1971), pp. 273–74. See also John Baldwin, *Masters, Princes and Merchants. The Social Views of Peter the Chanter and his Circle* (Princeton, 1970), 1:54–55. Support for canonical penances reappeared in the face of Protestant criticism in the 16th century; see Mariano Victorio Reatino, *De sacramento confessionis, seu, paenitentiae, historia: ex veteribus sanctis patribus...* (Rome, 1562), p. 244.

⁷ Angelus Carletus, *Summa angelica*, pp. 268^v–269. Johannes Auerbach, *Summa de auditioni confessionis*, unpaginated.

⁸ Peter Lombard still knew only the private/solemn penance distinction; see Peter Lombard, *Sententiae in IV Libris distinctae*, 3rd ed. (Grottaferrata 1981), IV. xiv.4–5, pp. 321–22.

⁹ Angelus Carletus, *Summa angelica*, pp. 268^v–269; Johannes de Burgo, *Pupilla oculi* (Paris, 1510), V, cap. 1; Monte Rocherii, *Manipulus curatorum*, p. 65^v. But also the later Reatino, *De sacramento confessionis*, pp. 209–10. For a detailed treatment of John Burgh’s *Pupilla oculi*, see Henry Ansgar Kelly’s essay and accompanying appendix in this volume.

¹⁰ Breitenbach, *Perutilis repetitio*, pp. D–D^v. The 21st canon of the Lateran IV (1215), *Omnis utriusque sexus* was the first universally binding rule governing frequency for both confession and the Eucharist.

of absolution had been until recently deprecatative or intercessory, not indicative or declaratory.¹¹

Despite the medieval lack of interest in historical change, Protestant reformers would draw heavily upon the scholastic manuals to criticize the sacrament from an historical perspective. In fact, the manuals would remain the most important source for historians of high and late medieval penance well into the 20th century. The agendas of the manuals, seconded by the Protestant critique based upon them, subtly guided historical reconstructions of the sacrament for centuries. And that meant that most histories of the sacrament concern the theology and prescribed administration of penance rather than its actual practice and possible effects. Until recently, it has also limited the significance of penance to the personal and the psychological, neglecting the communal and social.

Reformation

Martin Luther's *95 Theses* complained that indulgences undermined the rigour of the penitential system. But as his theology evolved, he criticized Catholic sacramental penance because a complete confession of sins was both impossible and oppressive. In following Luther, Protestant attacks on Catholic penance took two seemingly contradictory tacks. On the one hand, the sacrament was impossibly rigorous and tyrannical, and on the other hand, it was so lax as to encourage sin. Humanists among the reformers soon added an historical critique by using patristic texts to show that Catholic claims to ancient tradition had feet of clay.¹² The continuing polemics between the confessional parties, in particular the innovative and effective use that the Protestant *Magdeburg Centuries* made of original sources from throughout the history of the Church, extended the historical investigation into the High Middle Ages. As with ancient penance, so too with medieval

¹¹ Ludwig Ott, "Das Opusculum des hl. Thomas von Aquin *De forma absolutionis* in dogmengeschichtlicher Betrachtung," in *Festschrift Eduard Eichmann zum 70. Geburtstag*, ed. Martin Grabmann and K. Hofmann (Paderborn, 1940), pp. 99–135. For additional discussion of Thomas Aquinas' description of absolution, see in this volume Henry Ansgar Kelly's essay, under the heading "Views of the Sacrament of Penance: Necessity and Advantage."

¹² Jacques Latomus, *De confessione secreta* (Antwerp, 1525), pp. B, A₂, saw both theological and historical attacks.

sacramental confession: Protestant authors laid the foundations for an historical understanding of the sacrament. Their interest was doctrinal and institutional, and their sources were the legal and theological texts that scholasticism had churned out. The scholastic *pro et contra* provided critics with ample ammunition. Gratian's *Decretum* (c.1140) alone was a goldmine, but Peter Lombard (1095–1160), Thomas Aquinas, Duns Scotus (1265/66–1308), and lesser figures all served Protestant polemic well. The 12th and 13th centuries were the crux. As the Protestants discovered, early scholastic speculation promulgated the doctrine of the seven sacraments.¹³ The three components of penance (contrition, confession, satisfaction) were also formally prescribed, although the actual role of each was hotly contested.¹⁴ The lack of agreement among the scholastics was itself one of the most important Protestant weapons against the Catholic claims of the immutability and continuity of Church teaching. Protestant writers discovered that mandatory, detailed confession of sins along with their attendant circumstances derived from the scholastics and Innocent III.¹⁵ They accorded Innocent and Lateran IV a mythic importance and credited them with the annual, private, and complete confession of sins by Christians.¹⁶

Despite the early Protestant concern for the negative impact of the confession upon individual believers, 16th-century historians ignored that aspect of the sacrament. The Protestant historians had shown, however, that the sacrament had changed considerably over time and that the 16th-century form of confession was a relatively new product of papal authority and scholastic speculation.¹⁷ They had, in effect, transferred the field of combat from theology to historical theology. While this shift drove continued research, it also constrained the questions and answers that research could provide.

¹³ Lombard, *Sententiae*, IV.ii.1 p. 239. Matthias Flacius Illyricus et al., *Ecclesiastica historia...*, 7 vols (Basel, 1560), 7:587–90. Martin Chemnitz [and Eduard Preuss], *Examen Concilii Tridentini* (Schlawitz, 1861), p. 227.

¹⁴ Flacius, *Ecclesiastica historia*, 7:805; Lombard, *Sententiae*, IV.xvii.4, p. 351. Chemnitz, *Examen*, pp. 430–31, 436, 438–39, 454.

¹⁵ Flacius, *Ecclesiastica historia*, 3:praefatio; 7:804–05; and 7:805; Chemnitz, *Examen*, p. 452.

¹⁶ Flacius, *Ecclesiastica historia*, 3:251; Chemnitz, *Examen*, p. 452.

¹⁷ See also Chemnitz, *Examen*, pp. 232, 450.

The historical “turn” caught the Catholics flat-footed, despite their claim upon the past.¹⁸ Catholic tradition was in fact quite ahistorical, since it was required to reflect eternal truths. The possibility that tradition in the form of history might contest the “facts” established by theology and ecclesiastical authority was only with difficulty comprehended by Catholic authors and was never actually conceded.¹⁹ The Protestant *Magdeburg Centuries* had also not quite grasped the point.²⁰ Catholics in the 16th century were reduced to polemical devices and theological arguments, neither of which was likely to impress learned observers.²¹ The Catholic riposte to the *Magdeburg Centuries*, Cardinal Caesar Baronius’ magisterial *Ecclesiastical Annals*, was of no assistance for the High and later Middle Ages, because it stopped in the 12th century and did not address any of the issues being argued.²²

Both Catholics and Protestants rejected the idea that any change could be beneficial. What was earliest was best and truest.²³ They agreed on positive development within the Bible from Old Testament to New, but they both insisted that any post-biblical development was necessarily a fall from primeval truth.²⁴ For Catholics that meant that the 16th century in effect defined what was “possible” for all earlier ages.²⁵ If ancient or medieval documents failed to support that truth, then they were either re-interpreted or rejected as atypical.²⁶ The length of time needed for the Catholics to stage a credible response shows how alien

¹⁸ For example, the Jesuit polemicist Robert Bellarmine, *Disputationes... de controversiis Christianae fidei* (Venice, 1588), pp. 248–49, still holds Dionysius the Areopagite to be Paul’s disciple despite the Protestant rejection of the attribution. Chemnitz, *Examen*, p. 449, also rejected the attribution of *De vera et falsa poenitentia* to Augustine.

¹⁹ Isaac Casaubon, *De rebus sacris & ecclesiasticis exercitationes XVI* (Frankfort, 1615), p. F2, charged that Baronius (see n. 22 below) confused history and theology.

²⁰ Flacius, *Ecclesiastica historia*, 1:praefatio; Casaubon, *De rebus sacris*, p. c3a^r, may have had this in mind in qualifying his praise of the *Historia ecclesiastica*.

²¹ For example, Latomus, *De confessione secreta*, pp. b5b–b5^v, C–C^v, D2–D2^v, C^v, C2–C2^v, C3^v; Reatino, *De sacramento confessionis*, pp. 5–6, 22–23, 80–81, 148–49.

²² Cesare Baronio, *Annales ecclesiastici* (Cologne, 1609). Like the *Magdeburg Centuries*, it retrieved ancient and medieval sources to reconstruct the Church’s history.

²³ “Nam quid est antiquitas non vera, nisi latens sub larva novitas: aut quae vetustas contra Veritatem stare potest: quum sit extra omne dubium, id verius est, quod prius; id prius, quod a principio,” Casaubon, *De rebus sacris*, pp. 2–3.

²⁴ Chemnitz, *Examen*, pp. 232, 450.

²⁵ Casaubon, *De rebus sacris*, p. E3^v.

²⁶ For example, Latomus, *De confessione secreta*, p. D5; and Casaubon, *De rebus sacris*, p. C3a^r. A particularly explicit case of meeting historical evidence with authoritative dicta is found in Martin Becanus, *Theologiae scholasticae pars tertia. Tractatus secundus de sacramentis ecclesiae* (Mainz, 1628), pp. 544, 562, 545.

an historical treatment of religion was to them. The Protestants had the advantage in being the challengers of the status quo. They were also able to play upon a theological/philosophical distrust of history as the realm of error and devolution. Their ability to historicize the Catholic sacrament in itself transferred it from the realm of eternal biblical truth.

The Age of Engaged Scholarship: Seventeenth and Eighteenth Centuries

Despite their signal general importance, the *Magdeburg Centuries* and Cardinal Baronius contributed nothing to the historical understanding of high/late medieval and early modern penance. However, the 17th century saw a decisive shift from historical theology to history itself. To be sure, that history still served the needs of theology, but at least in some cases it began to shape the theological vision rather than merely provide historical ammunition for theological polemic.²⁷ For the first time, Catholic scholars dominated. In fact, the Protestants contributed little. Religious orders provided the perfect workers for the scholarly study of the sources. Monastic authors were able, and sometimes ordered, to spend decades poring through the archives in search of evidence supporting the Church's claims.²⁸ The ability of Catholic scholars to address the sources with some objectivity, however, owed much to another important change. Although the initial impetus for the new scholarship was the confrontation with Protestantism, the theological polemics that this research often served were intra-Catholic. This reflects a new Catholic self-confidence that had written off Protestantism as just another regional heresy that was no longer a threat to the life of the Church as a whole. But it also reveals a new insularity that

²⁷ Honoratus Tournely, *Praelectiones theologicae, de sacramentis poenitentiae et extremae unctionis* (Venice, 1731), p. 4b' [hereafter cited as Tournely].

²⁸ Augustinus Theiner, *Annales ecclesiastici, quos post Caesarem S. R. E. Card. Baronium, Odoricum Raynaldum, ac Iacobum Laderchium... Ab an. MDLXXII. Ad nostra usque tempora continuat*, 3 vols (Rome, 1856), 1:202–03, 318. Casaubon, *De rebus sacris*, p. C3a'. The Jesuits played little role, perhaps because their "Ratio Studiorum" was rhetorical and theological, as was appropriate for their pastoral and apologetic mission. History played little or no role; see Uwe Neddermeyer, "Das katholische Geschichtsbuch des 17. Jahrhunderts: Orazio Torsellinis 'Epitome Historiarum'," *Historisches Jahrbuch* 108 (1988), 480–81.

resulted from the Counter-Reformation's efforts to seal off the faithful from Protestantism.²⁹

The Baronius continuator, Odorico Rinaldi (1595–1671), was the first to mark the shift. For example, his discussion of *Omnis utriusque sexus* focused not on the annual requirement that had so exercised earlier Protestants and Catholics but on the specification of the *sacerdotus proprius* [one's own priest] to whom the confession should be made.³⁰ The clashes between the mendicant [begging] orders (Franciscans, Dominicans, Carmelites, Augustinians) and the secular [i.e., in the world] clergy over the right of papally privileged friars to infringe upon parish priests' sacramental monopoly of confession exercised Rinaldi even more than the Protestant attacks on the sacrament itself.³¹ The Oratorian Rinaldi, not surprisingly, sided with the mendicants.³² His argument against the charge that Innocent had invented the requirement to confess one's sins in detail, however, was particularly striking. Taking a page from Lorenzo Valla's critique of the Donation of Constantine, Rinaldi observed that he found no contemporary comment that such a radical "innovation" should have occasioned.³³ In general, Rinaldi was more interested in detailing heretical opposition to the sacrament—for which he drew extensively on documents for the 14th and 15th centuries—than in presenting positive doctrine.³⁴ The heresies are presented as the forerunners of Luther, as is the great humanist Desiderius Erasmus (1466–1536).³⁵ Rinaldi, while harshly critical of Luther, discusses the development in the reformer's thought without simply using that change to accuse him of duplicity or contradiction.³⁶ Perhaps most striking in his treatment of the Reformation era was Rinaldi's analysis of abuse in the sale of indulgences by "quaestors" such

²⁹ Jean Morin, *Commentarius historicus de disciplina in administratione sacramenti poenitentiae* (Antwerp 1682), p. 4b^v, wrote only for Catholics [hereafter cited as Morin].

³⁰ Caesare Baronio, *Annales ecclesiastici... cum continuatione Raynaldi*, 38 vols (Luca, 1738–59), 15:25 [hereafter cited as Raynaldus].

³¹ Raynaldus, 14:21; 15:6, 20, 24; 17:15; 18:11.

³² Raynaldus, 17:15.

³³ Raynaldus, 18:11.

³⁴ Raynaldus, 18:29. Note three late medieval papal decisions, 17:23; 18:21.

³⁵ On Wycliffites, see Raynaldus, 15:44. On the condemnation of Peter of Osma in 1479 and his relationship to Protestant views of the sacrament, see Raynaldus, 19:32. On Erasmus, see Raynaldus, 20:96. Raynaldus does not attack the philological method as such, as the theologians did. For an example of the latter, see note 68 below.

³⁶ Raynaldus, 20:142.

as the Dominican Johann Tetzel (1565–19) in which Leo X (1513–21) and other popes came in for their share of criticism.³⁷

Despite the advances made by Rinaldi, the real departure in the history of the sacrament came from yet another Oratorian, the converted Protestant Jean Morin (1591–1659), the first true scholarly historian of penance. The difference from even Rinaldi is remarkable. Morin shifted the focus from the doctrine of penance to the prescribed practice of the sacrament.³⁸ The range of his sources expanded dramatically to include books of ritual and penitentials, but also included a much deeper sounding of both printed and manuscript scholastic sources.³⁹ The result was the first detailed chronology of the changes that overtook penance during the High Middle Ages. Though the precise dating of individual stages was subject to revision by later scholarship, Morin's framework would be foundational. For Morin, the story is of a rapid decline of the centuries-old rigorous penitential system accompanied by its theological redefinition; the villains are popes and scholastics; the weapons are indulgences and Aristotelian dialectic.⁴⁰ Urban II's crusade indulgence marks the beginning of the process.⁴¹ Indulgences undermine the laity's willingness to undergo the traditional penances, with the result that public penance disappears by the 14th century in many parts of Europe.⁴² The right of confessors to assign an "arbitrary" satisfaction is widely accepted by the 13th century.⁴³ The 12th century sees absolution granted immediately after confession and followed by the performance of satisfaction/penance.⁴⁴ This change is accompanied by theological controversies concerning the meaning and formula of absolution, as well as its relationship to contrition. From around 1113 until around 1250, most scholastics teach that absolution applied to the penalty [*poenam*] and not the guilt [*culpam*] incurred by sin, because only

³⁷ Raynaldus, 20:58–59, 100–01.

³⁸ Morin, preface, p. 4b'.

³⁹ Morin, lib. I, cap. xviii (no page number); also, p. 220.

⁴⁰ Morin, pp. 776–77; Gaspard Juénin, *Commentarius historicus, et dogmaticus de sacramentis*, 2 vols in 1 (Venice, 1773), 2:565 [hereafter cited as Juénin]. See also Tournely, pp. 275–76.

⁴¹ Morin, p. 765.

⁴² Morin, p. 768. Around 1140, Peter Pictavensis [Peter of Poitiers] was the first to make the distinction of a "solemn" from "public" penance; see Morin, pp. 203, 320. Public penance was still practised in rural areas; see Morin, p. 322.

⁴³ Morin, pp. 789–90.

⁴⁴ Morin, p. 781.

God can forgive sin.⁴⁵ Also beginning around 1100, a new indicative formula of absolution appears occasionally alongside the almost universal deprecativ. The indicative formula becomes the most common usage by the end of the 13th century.⁴⁶ Beginning around 1130, the scholastics also argue about the role of contrition and the necessity of auricular confession to a priest. Peter Lombard's claim that sin was forgiven by contrition to which was conjoined the intention to confess dominates from 1160 to around 1240.⁴⁷ Absolution assumes a declaratory function, which furthers the shift from deprecativ to indicative formulas. Around 1200 the *habitus* theory makes its first appearance and by around 1240 replaces Lombard's doctrine.⁴⁸ During this same period, beginning around 1220, the first debates on attrition also occur and rage for 40 years.⁴⁹

The solidity of Morin's scholarship constrained both friend and foe in the succeeding centuries to follow in his wake.⁵⁰ Others extended research beyond the 13th century, and laid the foundations of historical scholarship on the 16th and 17th centuries.⁵¹ Of course, further explorations of the texts produced new pieces of the puzzle even in the period covered by Morin. For example, the Oratorian historian Gaspard Juénin (1650–1713) credited William of Auxerre with the first application of the *forma/materia* distinction to penance around 1215.⁵² He

⁴⁵ Morin, p. 777.

⁴⁶ Morin, pp. 540–41.

⁴⁷ Morin, p. 505; Lombard, *Sententiae*, IV.xvii.1, pp. 342–46.

⁴⁸ Morin, p. 505. Under the influence of Aristotelian ethical theory, scholastics such as Thomas Aquinas credited the sacrament with more than the simple forgiveness that earlier theologians had acknowledged. Sacramental penance re-infused the baptismal supernatural habit of grace that in large measure repaired the disorder in the soul and elevated it into a supernatural state of grace worthy of eternal beatitude. The early scholastics envisioned human goodness (contrition) eliciting forgiveness from a merciful God. While accepting some preliminary human goodness, the *habitus* theory credited the sacrament with infusing the divine goodness that made the sinner acceptable to God.

⁴⁹ Morin, pp. 512–13.

⁵⁰ Tournely, p. 272. Although he often disagreed with Morin, the Jesuit theologian Nicolaus Schmittlein, *Dissertatio historico-dogmatico-theologica, de sacramento poenitentiae* (Bamberg, 1760), p. 7, cited only Morin and other Jesuits. Morin's accomplishment also freed the celebrated Maurist Edmond Martène (1654–1739) to concentrate on the other rites and sacraments; see Edmond Martène, *De antiquis ecclesiae ritibus...* (Antwerp, 1736), preface [hereafter cited as Martène].

⁵¹ Tournely, pp. 175–76.

⁵² Juénin, 1:20. In this Aristotelian distinction, the *forma* actively “forms” passive *materia* to produce a substance. In other words, the *forma* makes a thing to be what it is. In the case of baptism, water is the *materia*, and the words “I baptize you in the

also found evidence of public penance in the 16th century.⁵³ Edmond Martène (1654–1739) uncovered forerunners of the *omnis utriusque sexus* in the early Middle Ages and dated the first instance of assignment of penance—not merely the fulfilment of the penance—after absolution to around 1200.⁵⁴ Morin’s pre-eminence did not, of course, leave him uncriticized or uncorrected, although normally he was refuted by appeals to reason or dogma, not new or reinterpreted historical evidence.⁵⁵

If the study of penance in the 16th century had been driven by Protestantism both as the proponent of a new historical vision and the target of Catholic vitriol, the controversies of the 17th and 18th centuries centred on the Jesuits.⁵⁶ More traditional pastors branded their casuistry as betrayal of the tradition, which, given the central role accorded to tradition by the Council of Trent (1545–63), was not far from a charge of heresy. Attacks on the Jesuits usually targeted their acceptance of attrition, understood as sorrow for sin based not on love of God but solely on fear of hell, as sufficient for forgiveness as well as their assignment of inappropriately light penances.⁵⁷ Opponents did not grasp the Jesuit use of penance to form consciences and instead remained loyal to older notions of punishment and deterrence. The other assault on the Jesuits concerned the mendicant-secular controversies over the *sacerdos proprius in omnis utrisque sexus*. Their opponents drew upon the long history of that quarrel and Trent’s attempted resolution in hopes of denying the Jesuit’s right to hear confessions at all.⁵⁸ Gallicanism also reared its head in defence of (French) episcopal jurisdiction.⁵⁹ Quietism and Jansenism came in for their share of criticism

name...” are the *forma*. For Aquinas, sacerdotal absolution is the *forma*, whereas contrition, confession, and satisfaction are the *materia*.

⁵³ Juénin, 1:542–43.

⁵⁴ Martène, pp. 723–25, 754.

⁵⁵ Juénin, 2:358, 557–58.

⁵⁶ Morin, p. 82^v.

⁵⁷ Morin, p. 47; Juénin, 2:266–67; Tournely, pp. 126–32. In what was a sly dig at the Jesuits, Martène, p. 750, recounts as an example of laxity the fact that as penance for a murder, a 10th-century noblewoman said the psalter three times a week and gave alms.

⁵⁸ Juénin, 2:304–07, 354; Tournely, pp. 192–93.

⁵⁹ Tournely, pp. 199, 200–02. Gallicanism was a movement among French clerics that elevated the role of the bishops and French king in the Church while restraining, to some extent, papal authority.

as well.⁶⁰ Higher historical standards did not, after all, preclude engagement in the issues of the day.

But the establishment of history as a discipline separate from theology was the most significant development of the era.⁶¹ This was not unopposed or even quite comprehended by theologians. Morin patiently explained that just because he described the teaching of a theologian did not mean that he agreed with that theologian.⁶² And he quite openly disagreed with Trent on historical fact, while accepting its theological infallibility.⁶³ The influential Gallican Parisian professor of theology, Honoré Tournely (1658–1729), excused Aquinas for his failure to consult the sources when making historical pronouncements,⁶⁴ while Morin chided the scholastics' inability to comprehend that conflicting *sententiae* simply reflected differing times and places.⁶⁵ The historians showed themselves children of the Scientific Revolution by their contempt for rationalism and Aristotle and their reliance on empirical evidence that required merely the eye to grasp.⁶⁶ Scholastic theologians confronted by these unprecedented claims could only respond by appeals to authoritative definition, the consensus of the schools, or "reasoned" proof.⁶⁷ They were outraged that philologists or a few old manuscripts could challenge Trent on what the tradition actually had been.⁶⁸ Despite the somewhat comic character of these outbursts, the underlying problem was a serious one. Had the teaching of the Church changed or grown with time?⁶⁹ How should the Church reconcile present truth with a contradictory history?⁷⁰

⁶⁰ Quietism was a mystical spirituality that thought intellectual stillness and interior passivity were necessary to achieve perfection. On Quietism, see Tournely, p. 73. Jansenism was theologically Augustinian, with an emphasis on human sinfulness, the need for grace, and a demand for more rigorous standards of behaviour. On Jansenism, see Tournely, p. 115.

⁶¹ Morin, p. 601.

⁶² Morin, pp. 62^v, 4^v.

⁶³ Morin, pp. 588–94. Tournely, pp. 90, 199–200, denied that either Lateran V or the Tridentine Catechism were authoritative.

⁶⁴ Tournely, p. 310.

⁶⁵ Morin, pp. 322, 337, 770.

⁶⁶ Morin, p. 272; Tournely, pp. 312, 314; Martène, prefatory letter.

⁶⁷ Morin, p. 541; Juénin, 2:276–77; Tournely, pp. 157–58, 314–15. For an example of the problem, see Schmittlein, *Dissertatio*, p. 8.

⁶⁸ Schmittlein, *Dissertatio*, pp. 3, 16.

⁶⁹ Morin, pp. 4a–4a^v; Tournely, pp. 4b^v, 40–41, 187, 188; Juénin, 1:1.

⁷⁰ One wonders how Martène, pp. 761–63, reconciled the Church's teaching on priestly absolution with his evidence that as late as the 13th century, deacons had heard confessions and that the laity, and even abbesses, had also done so.

The First Secular Critiques: Nineteenth Century

In the wake of the Enlightenment and French Revolution, the Catholic Church faced a new interpretation of the history of penance. Building upon the scepticism of the *philosophes* concerning traditional religion and upon the support of the principle of the secular state embodied in both the American and French revolutions, liberals shifted the focus of scholarship to a new series of issues.⁷¹ For the first time, scholars concerned themselves with the effects of the penitential system upon both individual behaviour and the socio-political order. Pursuing these facets, historians attended to new sources, including records of the Inquisition, or to sources that had previously played a marginal role.⁷² A prurient preoccupation with sex in the confessional and in the prescriptive literature became very pronounced. Finally, informing the entire enterprise was the implicit assumption of a modern, non-confessional, simple, and socially palatable form of Christianity that owed less perhaps to the Gospels than to the shared ethos of the progressive upper and middle classes.⁷³

In Catholic France, the Church's role as prop of the *Ancien Régime* and pillar of counter-revolution made the confessional a threat to individual liberty and national independence.⁷⁴ For liberal historians, the French Revolution was a blessed period in which the mass of the population let fall the superstitious shackles of the penitential system once it was

⁷¹ Catholic apologists were keenly aware of the damage done by the Enlightenment. Anton Joseph Binterim, *Die vorzüglichsten Denkwürdigkeiten der christ-katholischen Kirche...*, 2nd unchanged ed., 7 vols (Mainz, 1837), 1:xi, insisted that Catholicism was the true Enlightenment [hereafter cited as Binterim].

⁷² Archibald Boyd, *Confession, Absolution, and the Real Presence*, 2nd ed. (London, 1867), pp. 169–76, compares the statistics for the incidence of illegitimacy in Catholic and Protestant countries [hereafter cited as Boyd]. Count C. P. de Lasteyrie, *The History of Auricular Confession*, trans. Charles Cocks, 2 vols (London, 1848) placed special reliance on chronicles [hereafter cited as de Lasteyrie].

⁷³ Boyd, p. 71: "But this habit [of confession] can hardly be formed without breaking down that manliness of thought and that vigour of self-reliance, and that sacredness of personal responsibility, which ought to belong to the Bible-taught Christian." De Lasteyrie, 1:x–xi, offered his work as a defence of "true religion, intellectual liberty, and the progress of civilization." He understood true religion as "rational and evangelical religion," or as "morality and enlightened religion."

⁷⁴ De Lasteyrie, 1:149, argued that the popes licensed the mendicants to hear confessions in order to build papal power. Then, the religious orders forwarded reports to their superiors in Rome (p. 205).

deprived of governmental enforcement.⁷⁵ Unlike Protestants, who had ascribed the appeal of confession to papal indoctrination, the liberals favoured a crudely coercive explanation on the assumption that since the sacrament was unnatural, only fear of punishment could explain its success among the mass of the population.⁷⁶ Liberals saw it as unfortunate that revolutionary liberation had been followed by the efforts of Napoleon and his monarchical successors to re-impose the Church's discipline in order to reinforce their own authority.⁷⁷ Across the channel, the Anglo-Catholic interest in a revived practice of confession conjured up the spectre of a clerical cabal using the authority of the confessional to undermine the nation's manhood and the traditional rights of the free-born Englishman.⁷⁸ The fear of present conspiracies in both France and England directed attention to the unhappy union or tension between church and state in the past.⁷⁹ In both Germany and England, nascent nationalism placed the sacrament on the national stage rather than the universal.⁸⁰

Protestant reformers had emphasized the confessional as a burden on the oppressed conscience. Liberal historians, by contrast, described sacramental penance as a threat to morality or, at the very least, an ineffective bar to immorality.⁸¹ They denied any historical proof that the penitential system had effected positive change in behaviour.⁸² Nor did they think it likely in any event, given their belief that religious faith

⁷⁵ De Lasteyrie, 1:159; see 2:186, on the role of Louis XVI's confessor in opposing revolution.

⁷⁶ De Lasteyrie, 1:159–60.

⁷⁷ De Lasteyrie, 1:186, 2:173, although the middle and lower classes followed the enlightened upper classes in neglecting the sacrament after the restoration in 1814.

⁷⁸ Boyd, pp. 36, 63: confession as an attack "on the manliness and independence of national character."

⁷⁹ De Lasteyrie, 1:143, mentions the punishment for heresy inflicted on ministers of state in the place of Henri IV but normally emphasizes the alliance of church and state. For a general indictment of the confessional as a source of civil unrest, see de Lasteyrie, 1:212–13, 217–18.

⁸⁰ Binterim, 1:x. Boyd, preface, seeks to protect the Church of England from foreign encroachments.

⁸¹ De Lasteyrie, 1:130, complains in general that the Church imposed "obligations contrary to the duties of society and even to those of nature." He also felt (p. 154) that people in his time accepted frequent confession because the penances were so light.

⁸² De Lasteyrie, 1:xii–xiv. In this, the ancient Church, for all its rigour, was no better (p. 122). It inspired neither regular nor charitable behaviour, because penances were "corporeal, deprecatory, mystical." Boyd, pp. 61–62, allowed that confession might in theory be useful but observed that in practice it had had negative moral and social effects.

was involuntary and superficial. They condemned penance as an active cause of immorality, because it relieved the individual's sense of guilt and responsibility and because of the effect of the scandalous technical instruction that confessors received.⁸³ At the same time, confession was feared because of the "injury done to the very texture of the modern mind by a habit of perpetual introspection and self-scrutiny, such as the confessional requires. . . . All this cannot be without inducing a morbid, unmanly condition, opposed certainly to the peace and probably to the vigour of religion."⁸⁴

Given the modern preoccupation with sexuality, the detailed descriptions of illicit sexual practice contained in the manuals for confessors were viewed with horror and disgust.⁸⁵ Surely, they reasoned, the manuals provided a school in debauchery for the clergy and their flocks. The threat posed to female virtue by the authority of the confessor and the seclusion of the confessional fascinated the critics of the sacrament in a way not seen before.⁸⁶ Scandalous tales from the 16th and 17th centuries were culled from official Church sources to convict the Church out of its own mouth, to prove the Church's awareness of the extent and intractability of the problem, and to condemn the secrecy with which the clergy concealed its own failings.⁸⁷ Although the liberal historians agreed with their Protestant predecessors that sacramental penance was a late invention of scholastic superstition, they shifted the focus from the history of doctrine and praxis to other topics that better reflected their own concerns. Anti-clerical sentiments gave renewed interest to the history of confessions made to the laity.⁸⁸ The late development,

⁸³ See de Lasteyrie, 1:123, for mechanical penances that relieve consciences but effect no change in character. In 1:214–15, 225, he lays particular emphasis upon the salacious contents of confessional manuals.

⁸⁴ Boyd, p. 69.

⁸⁵ Boyd, pp. 181–82, was concerned both that a cleric could not read the manuals "without having the delicacy, the modesty, the purity of his mind greatly deteriorated" and that questions based on those manuals would be offensive "to modesty and feminine reserve."

⁸⁶ De Lasteyrie, 1:xv–xvi, 187. All told, de Lasteyrie devotes 26 pages in vol. 1, and 106 pages in vol. 2, to this problem. The Spanish Revolution had made the records of the Spanish Inquisition available; see Juan Antonio Llorente, *Historia crítica de la Inquisición de España: obra original conforme á lo que resulta de los archivos del Consejo de la Suprema, y de los tribunales de provincias* (Madrid, 1822). Much of the best evidence for solicitation came from that source.

⁸⁷ De Lasteyrie, 1:235–48; Boyd, pp. 179–81.

⁸⁸ De Lasteyrie, 1:104–08, 127. Binterim, 5:285–91, went to some lengths to defuse the evidence for confession to the laity.

outrageous claims, and financial chicanery of indulgences also came in for frequent comment. The heightened concern for the financial abuses of both the indulgences and the confessional may well reflect the unease occasioned by the new power and importance of money in early 19th-century capitalism.⁸⁹ The seal of confession, that is, the absolute secrecy required of the confessor, excited remarkable interest that was tied to the political threat posed by the sacrament, to issues of privacy (another modern preoccupation), and to the human weaknesses that priests shared with other men.⁹⁰

Catholic historians were clearly on the defensive for most of the 19th century. There were no figures of the stature of Baronius, Morin, or Martène. Theological dogma manifestly determined historical truth, while the defence of the Church provided the justification for studying the history of sacramental penance.⁹¹ The leading Catholic church historian Anton Binterim (1779–1855) openly professed: “It is incumbent upon historians of antiquity to follow history to its sources and thereby to justify dogma.”⁹² Both defenders and opponents of the sacrament believed history to be a threat to the Catholic Church, and its apologists contented themselves with disarming that threat and reaffirming Catholic doctrine, by whatever means necessary.⁹³

Primary research of the sort that 17th- and 18th-century clerics had pursued was no longer done and may have been consciously avoided.⁹⁴

⁸⁹ De Lasteyrie, 1:xi, 134; 2:141–42. Binterim, 5:297–98, complains “Der Mammon ist ein ganz eigener Abgott.”

⁹⁰ Binterim, 5:310–12, claimed that the seal predated Christ but was only given a special term by the scholastics.

⁹¹ Theiner, *Annales ecclesiastici*, p. xvi: “Satis enim erat inconcussae fidei monumenta proferre, quae rem totam explicarent, et errores vel, quod saepius sit, tum veterum, tum recentiorum historicorum calumnias nativa sua facie penitus exploderent.” Binterim, 5:259, lauded a predecessor who had explained away Gratian’s inconvenient evidence by relying on theologians and the “mind of the Church.”

⁹² Binterim, 5:459: “Dem Altertumsforscher steht es aber zu, die Geschichte bis zu ihrem Ursprunge zu verfolgen und so das Dogma zu begreifen...”

⁹³ Binterim, 2:viii, urged his readers not to misuse his findings against the Church as had happened with his earlier books. He also saw his work as correcting the damage done by contemporary Catholic histories that aided the enemy (5:278). De Lasteyrie, 2:274, relates the story of a curate who was converted into an enemy of Rome by the study of history. In 1907, as part of his attack on “Modernism,” Pius X specifically condemned the historical conception of an evolving sacrament; see Herbert Vorgrimler, *Busse und Krankensalbung* (Freiburg, 1978), p. 193.

⁹⁴ The last continuator of Baronius, Augustinus Theiner, was a pale imitation of the original. He concentrated on the upper hierarchy and regular clergy but avoided doctrine. Binterim, 1:xii–xiii, relied on the handbook of the Neopolitan Alexius Aurelius Pelliccia. Intriguingly, Binterim lauds, as something special, Pelliccia’s training

Instead, much that had been accomplished was passed over in silence or blandly denied.⁹⁵ For example, the widely published and authoritative Abbé Ambroise Guillois (1796–1856) blithely asserted that Dionysius the Areopagite was a contemporary of the Apostle Paul.⁹⁶ Guillois also relied much on arguments that begin: “Is it not evident...,” or “It cannot be questioned...” on issues that were far from evident and had been much questioned.⁹⁷ Perhaps the most bizarre assertion was that the seal of the confessional had never been broken during the long history of the Church, despite the inherent improbability and the documentary evidence to the contrary.⁹⁸ In other cases, manifest untruths were simply asserted. Guillois claimed that “[i]n all the places where the religion of Jesus Christ was known, confession was practiced, and practiced in the same manner,” despite the extensive discussion by earlier Catholic scholars of variant practices, both within Catholicism and in the Orthodox community.⁹⁹ He proved the uniformity of eastern and western practice by the participation of Greek patriarchs at Lateran IV, neglecting to mention that they were westerners intruded on eastern sees during the crusades.¹⁰⁰ The fundamental claim was that the Church, its doctrines

in paleography and diplomacy, whose usefulness Pelliccia discovered only after he had already received a chair at the university in 1812. Obviously such skills were not considered a prerequisite. Binterim, 1:xvii–xviii, claimed to check the assertions of earlier historians against the primary documents, but there is no evidence he did any of his own research. He also argues (1:xv) that the medieval lack of critical abilities enabled a deeper understanding of the Church’s teaching.

⁹⁵ Binterim, 5:316, claiming no interest in scholastic squabbling (“Zänkereien”) and fairy tales (“Mährchen”), virtually ignores inconvenient developments in the 12th and 13th centuries. Such terms are a strange way for an orthodox Catholic to refer to the theology of St Thomas Aquinas, among others. Ambroise Guillois, *The History of Confession; or, The Dogma of Confession Vindicated from the Attacks of Heretics and Infidels*, trans. Louis de Goesbriand, 2nd ed. (New York, 1889), p. 72 [hereafter cited as Guillois] argues with Benjamin Constant about a Chrysostom quote but gives neither the quote nor a citation to the passage in Constant.

⁹⁶ Guillois, *The History of Confession*, p. 83. This work also appeared in at least three French and two Italian editions. Guillois’ most important work, *Explication historique, dogmatique, morale, liturgique et canonique du catéchisme*, appeared in at least 15 French editions, seven Italian, and two German. It was approved by the hierarchy of France and by Pope Pius IX. Gustav Flaubert could cite it in court as representing Catholic teaching.

⁹⁷ Guillois, pp. 109, 111.

⁹⁸ Guillois, pp. 177–84. Binterim, 5:331–32, concedes maybe a single case in 1095 but argues that councils only addressed the “problem” because the scholastics had speculated about it.

⁹⁹ Guillois, p. 111.

¹⁰⁰ Guillois, pp. 112–13. Alexandria was represented by the Orthodox patriarch, although the practice in Egypt did not resemble that of the West.

and its practices was unchanged and unchangeable.¹⁰¹ History as such, that is, the study of change through time, was all but impossible for the key issues. It was reduced to a cloud of witnesses.¹⁰²

The ideological blinders on both liberals and Catholics produced parallel visions of history and of the sacrament addressed to the like-minded that rarely came to grips with the evidence or claims of the opposing party.¹⁰³ In earlier centuries, there had been at least some effort to convince or to undermine the certainty of the opposing party, for example Catholics and Protestants in the Reformation and rigourists and casuists in the 17th/18th centuries. For most of the 19th century, the opposing parties were content to malign each other while they provided encouragement to their confrères. This was hardly a recipe for great history.

Despite the twin threats of Protestantism and modern rationalism, sacramental penance actually enjoyed a resurgence in the middle of the 19th century. Lutheran Germany joined Anglican England and secular France as a site of contention. Luther's attachment to confession, despite Catholic abuses which in his mind disfigured it, resulted in the retention until the early 19th century of private confession in most German Lutheran churches.¹⁰⁴ The association of confession with reception of the Eucharist, the desire to discipline behaviour that disturbed

¹⁰¹ Binterim, I:vi–vii, xi, bases the Catholic Church's claim to be the true Church on its immutability, while basing its immutability upon the claim that it is the true Church.

¹⁰² Guillois, pp. 64–65, recounts the history of the sacrament to prove that Innocent did not invent it, although he begins by saying that since Christ had instituted it, there was really no need for the history. In general, Guillois provides extensive quotation from the sources with little commentary. They are to speak for themselves.

¹⁰³ Binterim, I:x, offered a history for believers, not for those who wanted to hear about divisions or revolutions within the Church. He claims (p. xvi) to know the Protestant literature but quite explicitly refuses to use it. In this he followed, probably unknowingly, the 16th-century instructions to the first Catholics commissioned to confute the *Magdeburg Centuries*: "Il modo che s'ha da rendere nel confutar le Centurie è, che senza far mentione di questi libri si componga a parte una storia Ecclesiastica, nella quale si vada mostrando la verità delle cose successe nella Chiesa Catolica di tempo in tempo, dalla qual verità si venga a far manifesta la falsità dell'historia degli heretici, confirmando etiam con ragioni, ove sarà bisogno la parte de Catholici, col rispondere a quelle degli heretici"; cited by Theiner, *Annales ecclesiastici*, p. 410.

¹⁰⁴ R. Franke, "Geschichte der evangelischen Privatbeichte in Sachsen," *Beiträge zur sächsischen Kirchengeschichte* 19 (1905), 41–142. Despite its clear theoretical differentiation, the laity saw little or no difference between Lutheran confession and its Catholic predecessor; see E. Fischer, *Zur Geschichte der evangelischen Beichte*, vol. 2, *Niedergang und Neubelebung des Beichtinstituts in Wittenberg in den Anfängen der Reformation* (Leipzig, 1903), p. 185.

the congregation, and the use of the confessional to examine believers' knowledge of the faith, encouraged secular authorities to enforce it, a clear example of the state's use of religion to discipline its subjects in what might anachronistically be called the public and private spheres.¹⁰⁵ Although it was not formally ended until 1876, private confession disappeared in practice in most Lutheran congregations under the impact of the Enlightenment and Revolution.¹⁰⁶ However, attempts in the 1850s to re-institute private confession required Lutherans to examine its history in the German Lutheran lands.¹⁰⁷ Georg Steitz's (1810–79) 1854 study of Lutheran confession makes clear the difficulties the topic caused for Lutheran clergy. On the one hand, Steitz proved that Luther's support of private confession stemmed from purely Protestant principles and was not a relapse into Catholicism or a sign of inconsistency. On the other, he argued against its reinstitution on the basis of those same Protestant principles. Since private confession had been a confessional, i.e., denominational, marker separating Lutherans and Calvinists, Steitz coolly admitted that Calvin had won the day against Luther on both the Lord's Supper and confession.¹⁰⁸ Steitz is less than honest in his claim that Lutheran confession had been an anomaly that quickly disappeared. Church orders that Steitz chose not to cite show that Lutheran confession became more important in the later 16th century and that it was adopted in new jurisdictions well into the 18th century.¹⁰⁹ Even after its demise, sporadic efforts to restore Lutheran

¹⁰⁵ A process that recent historians have labelled confessional (i.e., denominational) social disciplining. See pp. 53, 54 below. George Steitz, *Die Privatbeichte und Privatabsolution der Lutherischen Kirche aus den Quellen des XVI. Jahrhunderts* (Frankfurt, 1854), p. v, unhappily concedes that the freedom that should have characterized an evangelical penitential system fell victim to the needs of state in the 16th-century church orders.

¹⁰⁶ Franke, "Privatbeichte," pp. 45, 103, accurately imputes the decline to the rationalism of Lutheran theologians and the heightened self-esteem that rationalism brought the laity. Gottfried Galli, *Die lutherischen und calvinistischen Kirchenstrafen gegen Laien im Reformations-Zeitalter. Zugleich ein Beitrag zur Culturgeschichte* (Breslau, 1879), pp. iii–v, is a perfect example. Although Steitz, *Privatbeichte*, pp. ix–x, ascribes the decline to the triumph of evangelical principles, he also speaks (pp. vii–viii) of "der Fortgang der theologischen Entwicklung."

¹⁰⁷ Gustav Fr. Pfisterer, *Luthers Lehre von der Beichte* (Stuttgart, 1857).

¹⁰⁸ Steitz, *Privatbeichte*, pp. 159–60. *Confessional* in this use of the word stems from formal and legally binding confessions of faith such as the Augsburg Confession (1530).

¹⁰⁹ Dekan Lic. Gunthür, "Württemberg und die öffentliche Beichte auf lutherischen Boden während des 16. Jahrhunderts," *Monatsschrift für Gottesdienst und kirchliche Kunst* 2 (1898), 248–57. See also Franz Dibelius, "Beichte und Absolution nach der Predigt," *Beiträge zur sächsischen Kirchengeschichte* 1 (1882), 256–59; Franz Dibelius, "Von der Beichte in den oranien-nassausischen Gebieten," *Der Katholik* 75 (1895), 94–96; and Nikolaus

confession recurred in the early 20th century and historical studies of it continue to appear.¹¹⁰

A New Age of Scholarship: Late Nineteenth and Early Twentieth Centuries

A combination of factors in 1880s Germany launched the modern age of scholarship on penance. The *Kulturkampf* (1871–91) pitting the Protestant Imperial regime against the Catholic Church produced another battle to seize the high ground of history. The Rankean revolution in historical studies forged new weapons and professional standards, while German Romanticism pointed the way to popular sources, often in the vernacular, little exploited by earlier scholarship.¹¹¹ Although the unification of Germany fomented the *Kulturkampf*, it also fostered networks of transportation and communication that opened to scholars archives and libraries scattered around the country. The *Monumenta Historica Germaniae* (1826–) and the *Weimar Ausgabe* (1883–) of Luther's works also challenged Catholics to uncover and make known the monuments of their tradition. In spirit, the new Catholic scholarship reached back to the scholars of the 17th and 18th centuries upon whose works it often drew.¹¹² Not content merely to parry the liberals and Protestants, Catholic scholars such as Johannes Jansen (1821–91), Franz Falk (1840–1909), Nikolaus Paulus (1853–1930), and Joseph Greving (1868–1919) counter-attacked by presenting a positive picture of late medieval Catholicism that necessarily put in question the causes—and justification—for the Protestant Reformation.¹¹³ Their confessional agenda did not, however, undermine

Paulus, "Dominicus de Soto und die Beichte in Nürnberg," *Der Katholik* 79 (1899), 282–88. It was seen as a way to combat the vice that had followed the abolition of Catholic penance.

¹¹⁰ Karl Bachmann, *Geschichte der Kirchenzucht in Kurhessen von der Reformation bis zum Ausgange des XVIII Jahrhunderts* (Marburg, 1910); Georg Neunobel, *Aus der Geschichte der Privatbeichte in der evangelisch-lutherischen Landeskirche Hessen Darmstadts* (diss. Erlangen, 1926). Most recently, see Ronald Rittgers, *The Reformation of the Keys. Confession, Conscience, and Authority in Sixteenth-Century Germany* (Cambridge, Mass., 2004).

¹¹¹ A good example is Johannes Geffchen, *Der Bildercatechismus des fünfzehnten Jahrhunderts* (Leipzig, 1855). Although a Protestant, Geffchen was impressed by efforts of the old Church to instruct its flocks, even if he rejected the teaching itself.

¹¹² Jos. Mausbach, "Historisches und Apologetisches zur scholastischen Reuelehre," *Der Katholik* 18 (1897), 98, corrects Karl Müller's claim that no Protestants and few Catholics consulted Morin by citing Catholic examples.

¹¹³ Heribert Raab, "Reformationsgeschichtsschreibung und Konfessionspolemik im Kreis um Johannes Janssen," *Ecclesia Militans: Studien zur Konzilien- und Reformationsgeschichte*

their commitment to historical accuracy.¹¹⁴ The resulting publications still form the basis for historical study of the sacrament.

Liberal Protestant historians blended the secular and Protestant traditions in an updated critique of medieval and early modern penance. Their own preference for a doctrinally broad and morally centred interpretation of Christianity led them to harp upon the laxity of the late medieval penitential regime. Fearing the politically potent confessional in a democratic state,¹¹⁵ Henry Charles Lea (1825–1909) skilfully drew upon intra-Catholic arguments to attack the doctrine of attrition, the deleterious affects of indulgences, the granting of indulgences for the dead, and solicitation in the confessional. German Protestants also cited scholastic speculations on attrition to claim that Catholic teaching required neither faith nor love of God to receive forgiveness.¹¹⁶ True contrition, reform of life, and avoidance of sin no longer being required, the sacrament became a mechanical exercise that failed to enforce morality and encouraged sin by the ease of forgiveness.¹¹⁷

In a refinement based on 19th-century notions of progress, Karl Müller (1852–1940) turned on its head the Protestant narrative of medieval decline reversed by Luther's appeal to the primeval source, the Bible. Müller made the scholastic period, especially the writings of Peter Abelard (1079–1142), part of a liberal narrative of growing individualism

Remigius Bäumer zum 70. Geburtstag gewidmet, 2 vols., ed. Walter Brandmüller, Herbert Immenkoetter, and Erwin Iserloh (Paderborn, 1988), 2:661–95.

¹¹⁴ Paulus, for example, debunked the Catholic myth of Luther's suicide: Nikolaus Paulus, "Ein katholischer Augenzeuge über Luthers Lebensende," *Historisches Jahrbuch* 15 (1894), 811–19; idem, *Luthers Lebensende und der Eislebener Apotheker Johannes Landau* (Mainz, 1896); idem, *Luthers Lebensende. Eine kritische Untersuchung* (Freiburg, 1898). It is telling that the latter book was the first volume in Ludwig Pastor's series "Erläuterungen und Ergänzungen zu Janssens Geschichte des deutschen Volkes." Paulus also gave an even-handed treatment of Tetzl in *Johann Tetzl der Ablassprediger* (Mainz, 1899). By contrast to Paulus' concern for objectivity, Herman Joseph Schmitz, *Die Bussbücher und das kanonische Bussverfahren* (Dusseldorf, 1898), vol. 2, is prefaced by a letter from Leo XIII recommending the book and thanking the author for "vindicanda divina sacramenti poenitentiae" against "calumniam"; see also 1:8. For a considerably less even-handed Catholic treatment of the period, see Vincenz Hasak, *Dr. M. Luther und die religiöse Literatur seiner Zeit bis zum Jahre 1520* (Mainz, 1881). Hasak credits Luther with all of the ills of modern society: rationalism, revolution, and socialism!

¹¹⁵ Henry Charles Lea, *A History of Auricular Confession and Indulgences in the Latin Church* (Philadelphia, 1896), pp. 443–46.

¹¹⁶ For example, A. W. Dieckhoff, *Der Ablassstreit* (Gotha, 1886), pp. 6, 13, 21–25, 171.

¹¹⁷ Adolf Harnack, *Lehrbuch der Dogmengeschichte*, vol. 3, *Die Entwicklung des kirchlichen dogmas II, III. Register* (Freiburg, 1897), pp. 527–28; Fischer, *Evangelischen Beichte*, vol. 1, *Die katholische Beichtpraxis bei Beginn der Reformation und Luthers Stellung dazu in den Anfängen seiner Wirksamkeit* (Leipzig, 1902), pp. 83–88.

and interiority of religion. A rigorous but external system of discipline through which the Church forgave sinners gave way to an emphasis on contrition that put in question the need for confession and absolution by a priest.¹¹⁸ Abelard, the theological godfather of contritionism, stipulated that true confession derived solely from love of God (contrition), not fear of punishment (attrition).¹¹⁹ Luther represented a highpoint of subjectivism on its way to modernity.¹²⁰ Thirteenth-century scholastic theology, in contrast, integrated the new subjectivism into an objective (*opus operatum*) framework by lowering contrition to mere attrition and making up the difference through the sacerdotal power of the keys. The liberal Protestant charge that scholastic attrition undermined the ethical rigour and religious justification for penance therefore attacked the fundamental sacramental doctrine of the Church and the role of the priest in forgiving sin. The “subjective,” “religious,” and “ethical” contrition of the sinner competed with the “objective,” “hierarchical,” and “magical” priestly rite.¹²¹ *Opus operantis*, the contribution of the forgiven sinner, was set against *opus operatum*, the objective efficacy of the properly performed sacramental rite.

The Catholic response came in two forms: theological and historical. The conservative theological response continued to reject the idea of change, especially at the hands of the heretical Abelard.¹²² Joseph Mausbach (1861–1931), for example, maintained that both subjective

¹¹⁸ Karl Müller, “Die Umschwung in der Lehre von der Busse während des 12. Jahrhunderts,” *Theologische Abhandlungen. Carl von Weizsäcker zu seinen siebenzigsten Geburtstag* (Freiburg, 1892), pp. 295–96.

¹¹⁹ Müller, “Umschwung,” pp. 297–99, 304–06. The conservative sacramental position was defended by Hugh of St Victor; see pp. 299–300. On the role of Abelard, see also Polykarp Schmoll, *Die Busslehre der Frühscholastic: eine dogmengeschichtliche Untersuchung* (Munich, 1909), pp. 33–34. Abelard’s ethics reduced the goodness or sinfulness of an action to the intention of the actor, seemingly denying any objective standards of good and evil.

¹²⁰ Interestingly, Mausbach, “zur scholastischen Reuelehre,” pp. 109–10, sees the Kantian roots of the liberal Protestant emphasis on love rather than self-interest in contrition. As he remarks, Luther fell further short of that standard than the Catholics. He also questioned (p. 115), in a way that resembles the later criticism by Karl Holl and neo-Orthodox Protestants, whether the liberal outlook could be considered Christian or even religious. For early Lutheran criticism of liberal Protestantism’s understanding of Luther’s own teaching on contrition, see R. A. Lipsius, “Luthers Lehre von der Busse,” *Jahrbücher für protestantische Theologie* 18 (1892), 161–340.

¹²¹ Mausbach, “zur scholastischen Reuelehre,” pp. 48–50. Joseph Götter, *Der heilige Thomas von Aquin und die vortridentinischen Thomisten über die Wirkungen des Buss sacraments* (Freiburg, 1904), pp. vii, 1–2.

¹²² Or, at the very least, found him overly “spiritualistisch”; see Schmoll, *Busslehre*, p. 30.

and objective formed part of the timeless teaching of the Church but that the 12th and 13th centuries saw a flurry of scholastic pettifoggery of no great moment before the Thomistic restatement of tradition.¹²³ To undercut Abelard, Mausbach pointed out that scholastics understood contrition and attrition differently than the later definition used by critics.¹²⁴ But he also denied any pattern or direction to the scholastic speculation. It was much noise and fury signifying nothing. In essence, history remained a problem for the conservatives, and they limited its usefulness to apologetics.

Catholic scholars finally overcame the impasse by reviving the 17th-century distinction between essential doctrine and mutable practice¹²⁵ or by following Cardinal Newman, and Darwin, in allowing for an evolution of unfolding truth.¹²⁶ In the latter, at least, 19th-century science had supplanted classical metaphysics as the basic epistemological model. However, the prestige accorded Aquinas by Leo XIII's 1879 encyclical *Aeterni Patris* determined that Thomistic doctrine was equated with Tridentine dogma as the *telos*, the end, toward which the mind of the Church had been moving. As a result, for all three approaches—historical, theological, and evolutionary—the early scholastic period became the focus of research in order to understand the background of Aquinas's teaching.

¹²³ Mausbach, "Zur scholastischen Reuelehre," pp. 98–99. It is telling that Mausbach cites Bellarmine against Müller.

¹²⁴ The word *attritio* first appears with Alain de Lille (d. c.1202) and Stephen Langton (d. 1228); see Schmoll, *Busslehre*, p. 88; Göttler, "Aquinas," pp. 272–74.

¹²⁵ Schmoll, *Busslehre*, p. 6, assigns the variation to the differing character of the "nations" who converted in the early Middle Ages.

¹²⁶ Bertrand Kurtscheid, *Das Beichtiegel in seiner geschichtlichen Entwicklung* (Freiburg im Breslau, 1912), p. 1: "Hat Christus seine Kirche mit einem Senfkörnlein verglichen, das nur allmählich jenen Organismus entfaltet, wie er jetzt für uns steht...." The development of the "Beichtiegel" continued into the 17th century (pp. 118–20), although as late as the 19th it was being refined (p. 130). Clearly labelling his work as "geschichtlich" rather than "dogmengeschichtlich," he was nonetheless explicitly concerned to reconcile the disciplines (p. 155). Kurtscheid also conceded (p. v) that, in fact, the seal had often been broken. Leo Honoré, *Le secret de la confession: étude historico-canonique* (Bruges, 1924), p. 1, highlighted Kurtscheid's developmental understanding of the seal and referred to it as "evolution." Honoré refers to a review of Kurtscheid by J. B. Umberg in *Stimmen aus Maria-Laach* 83 (1912), 555, that had also noticed this significant claim. As a result, Honoré (pp. 19–20) felt it necessary to defend himself against possible charges of heresy. He criticizes Guillois (p. 124) for denying that the seal had ever been broken since it was a manifestly unbelievable claim, although Honoré thought that the cases were less numerous than others had asserted.

An interest in late medieval penitential theology also began to manifest itself.¹²⁷ Heinrich Schauerte's (1882–1975) study of the theology of Luther's Catholic adversary, Johannes Eck (1486–1543), carried the battle back into Protestant territory by making clear Eck's theological acumen and by suggesting that Luther had lost the theological contest but won the public relations battle.¹²⁸ In general, the detailed study of scholastic treatments of the sacrament tended to reduce Luther to a provincial, boorish, and ill-informed amateur.¹²⁹

Catholic historians also took a new tack in defence of the Church. In a series of important articles, Nikolaus Paulus cited dozens of *pastoralia*, works of edification, and *artes moriendi* to prove that whatever scholastics may have said, the faithful were taught on the ground that only sorrow occasioned by love of God was sufficient to receive forgiveness in confession.¹³⁰ While avoiding the Scylla of laxity, however, he had

¹²⁷ See, for example, the second half of Göttler, "Aquinas."

¹²⁸ Heinrich Schauerte, *Die Busslehre des Johannes Eck* (Münster, 1919), pp. 65–66, contrasted the admittedly vicious humanist polemic of Eck to the scatological style that Luther drew from popular vernacular culture. Luther did so to achieve a decided advantage in the appeal to the larger population.

¹²⁹ Martin Grabmann, "Das Konzil von Trient als Fortschrittsprinzip der katholischen Dogmatik," *Das Weltkonzil von Trient*, ed. Georg Schreiber (Freiburg, 1951), p. 45, emphasizes Luther's vernacular eloquence and Trent's theological depth and acumen.

¹³⁰ Nikolaus Paulus, "Die Reue in den deutschen Beichtschriften des ausgehenden Mittelalters," *Zeitschrift für katholische Theologie*, 28 (1904), 1–36; idem, "Die Reue in den deutschen Erbauungsschriften des ausgehenden Mittelalters," *Zeitschrift für katholische Theologie* 28 (1904), 449–85; idem, "Die Reue in den deutschen Sterbebüchlein des ausgehenden Mittelalters," *Zeitschrift für katholische Theologie* 28 (1904), 682–98. See also his earlier "Ein Beichtbüchlein für Erfurter Studenten aus dem 16. Jahrhundert," *Der Katholik* 19 (1899), 92–96, 382–84; and idem, "Johann Romming und dessen Beichtbüchlein für die Nürnberger Schuljugend," *Der Katholik* 21 (1900), 570–73. These last two pieces raise the question of whether and how the author/teachers may have used these texts as part of instruction. Paulus, "Beichtschriften," p. 2, cites Heinrich Finke, *Die kirchenpolitische und kirchlichen Verhältnisse zu Ende des Mittelalters nach der Darstellung K. Lamprechts* (Rome, 1896), p. 122: "Man hätte doch erwarten sollten, dass jemand, der so schwerwiegende Behauptungen aufstellt, das ganze Material der Zeit eingesehen hätte, um sich die Sicherheit zu verschaffen, dass die Attritio in jenen Zeiten tatsächlich die Form der Reue in den Kreisen unsers Volkes gewesen ist; denn auf letzteres kommt es doch an, nicht auf Lehrmeinungen...die dem Volk unbekannten geblieben sind." Finke captures both the skepsis toward the scholastics and the need for exhaustive research to overwhelm the Protestant claims. In like manner, Nikolaus Paulus, "Der Ablass für die Verstorbenen am Ausgange des Mittelalters," *Zeitschrift für katholische Theologie* 24 (1900), 249–66, carefully limits this phenomenon to the period after 1476, effectively assigns blame to one man, the papal legate Peraudi, and makes clear that it met vociferous opposition. See also Jos. Mausbach, "Katholische Katechismen von 1400–1700 über die zum Bussacramente erforderliche Reue," *Der Katholik* 16 (1897), 37–49, 109–22.

fallen prey to the Charybdis of oppression. He attempted to redress that imbalance by explicitly rejecting the charge that the medieval Catholic Church had failed to acknowledge the full scope of God's grace and forgiveness.

Despite its theologically technical topic, Paulus' work reflects a new concern to explore the way Church teaching was actually conveyed to the people.¹³¹ Johannes Dietterle's cataloguing of *summae confessorum* was an important if uncomfortable spur in this direction.¹³² The Protestant pastor Dietterle had used his catalogue to argue for the debasement of confession to a purely juridical act in the wake of *omnis utriusque sexus*.¹³³ Dietterle may have been reacting to Franz Falk's resurrection of the *ars moriendi* [art of dying] and his use of late medieval religious literature.¹³⁴ The title of Falk's *The Art of Printing in the Service of the Church* captures his concern to reclaim Gutenberg's achievement for the Catholic Church. The larger goal was to dissolve the exclusive linkage of printing with the Protestant Reformation that had bolstered the identification of Protestantism with the progress so valued by the 19th century. Given the iconic status of printing as a German world historical achievement, Falk's work also reintegrated Catholicism into the German national epic.

Not content with revealing the richness and availability of pastoral handbooks and other aids, Falk and others began the publication of *Pfarrbücher* from the eve of the Reformation. Written by pastors to keep track of revenues, rights, liturgies, and pastoral activities, the *Pfarrbücher* began to reveal how sacramental penance was actually administered

¹³¹ See also Franz Falk, "Der Unterricht des Volkes in den katechetischen Hauptstücken am Ende des Mittelalters," *Historisch-Politische Blätter für katholisches Deutschland* 108 (1891), 553–60, 682–99; 109 (1892), 81–96, 721–23; idem, ed., *Drei Beichtbüchlein nach den zehn Geboten aus der Frühzeit der Buchdruckerkunst* (Münster, 1907).

¹³² Johannes Dietterle, "Die Summae confessorum (sive de casibus conscientiae)—von ihren Anfängen an bis zu Sylvester Prierias—unter besonderer Berücksichtigung ihrer Bestimmungen über den Ablass," *Zeitschrift für Kirchengeschichte* 24 (1903), 353–74, 520–48; 25 (1904), 248–72; 26 (1905), 59–81, 350–62; 27 (1906), 70–83, 166–88, 296–310, 433–42; and 28 (1907), 401–31.

¹³³ Ibid., "Summae confessorum," *Zeitschrift für Kirchengeschichte* 24 (1903), 374. Already by the end of the 12th century, the borders between theology and canon law had been erased (p. 372). Dietterle urged Protestants to make use of these sources (p. 356). His tone can be gathered from this comment on Raymond of Peñafor: "Aber auch war hier sein Verfahren im letzten Grund eben nur das der Päpste und seine Unehrlichkeit die ihre." (p. 535).

¹³⁴ Franz Falk, *Die deutschen Sterbebüchlein von der ältesten Zeit des Buchdruckes bis zum Jahre 1520* (Cologne, 1890).

by parish clergy. Falk's publication of the *Pfarrbuch* of Florentius Diel (1491–1518) countered the myth that preaching was infrequent and occasional in late medieval parishes.¹³⁵ But it also gave evidence about the timing and frequency of confession. In fact, however, none of the *Pfarrbücher* editors highlighted that aspect of pastoral care, although later scholars would mine them for the practice of penance. Nonetheless, the *Pfarrbücher* made clear that the laity confessed only once annually, that the practice of *bina confessio* was widespread, and that the large numbers of Eastertide confessants required careful pastoral planning.¹³⁶ The *Beichtpfennig* [confession penny] was universal, and confessors were warned not to rush confessions in order to collect more fees.¹³⁷ The floods of penitents at Easter-time made at least one pastor thankful for mendicant assistance.¹³⁸ Interestingly, although the editors were all ordained priests and probably had personal experience hearing confessions, none commented on the quality of pastoral care possible given such large numbers in such a short time. Nor was much made of the fact that children's initial instruction in the practice of confession came not from the clergy but from the family, the primary "school" for piety.¹³⁹

¹³⁵ Franz Falk, ed., "Die pfarramtlichen Aufzeichnungen (*Liber consuetudinum*) des Florentius Diel zu St Christoph in Mainz (1491–1518)," in *Erläuterungen und Ergänzungen zu Janssens Geschichte des deutschen Volkes*, vol. 4 (Freiburg, 1904), pp. 39–64. See also Joseph Greving, ed. *Johann Ecks Pfarrbuch für U.L. Frau in Ingolstadt* (Münster, 1908), pp. 71–77, 87–92; Johann Baptist Götz, *Die religiöse Bewegung in der Oberpfalz von 1520 bis 1560: auf Grund archivalischer Forschungen* (Freiburg, 1907), p. 9; idem, *Das Pfarrbuch des Stephan May in Hilpoltstein vom Jahre 1511; ein Beitrag zum Verständnis der kirchlichen Verhältnisse Deutschlands am Vorabende der Reformation* (Münster, 1926), pp. 30–31, 87–91.

¹³⁶ Gebhard Mehring, ed., *Stift Lorch. Quellen zur Geschichte einer Pfarrkirche* (Stuttgart, 1911), p. 147, has a very detailed schedule of 13 days on which different children, adults, and villagers from the surrounding area could confess. The *bina confessio* required confession at the beginning and end of Lent. There was a separate schedule for the second confession, and Florentius Diel was concerned that the laity perform the second confession with the same priest; see Falk, *Pfarramtlichen Aufzeichnungen*, pp. 10, 14.

¹³⁷ Or to avoid spending more time on the rich in anticipation of a higher reward; see Greving, *Johann Ecks Pfarrbuch*, p. 50. "Ko-operators" also used the confessional to persuade the laity to attend their masses in order to receive the offerings (p. 51). Interestingly, it remained a problem for the Lutheran Church well into the 18th century; see Franke, "Privatbeichte," pp. 106–07.

¹³⁸ Falk, *Pfarramtliche Aufzeichnungen*, p. 64.

¹³⁹ Falk, *Pfarramtliche Aufzeichnungen*, p. 16; A. Schilling, "Die religiösen und kirchlichen Zustände der ehemaligen Reichstadt Biberach unmittelbar vor Einführung der Reformation," *Freiburger Diözesanarchiv* 19 (1887), 115. Gefken, *Bildercatechismus*, pp. 23–24, had already noted this.

The Catholic campaign to uncover sources documenting the reality of late medieval Catholicism thus had an ambivalent outcome. On the one hand, Catholic historians had revealed the Church's efforts to elevate the quality of pastoral care and, in particular, the penitential regime, through effective use of the printing press. On the other hand, they had also uncovered evidence of the perfunctory nature of confession for the mass of the population.¹⁴⁰ But the tenor of the scholarly works also underwent a fundamental change as the antagonisms of the *Kulturkampf* receded. While Falk was explicitly concerned to meet Protestant criticisms, younger scholars were more likely to pursue the less partisan goal of describing late medieval religion as an end in itself or as a reflection of local pride.¹⁴¹

The Inter-War Years: The Turn Inward

The interwar years saw a number of crucial changes in approach, in topics, and in sources. Catholic authors further abandoned long-held apologetic positions at the same time as they turned inward to investigate their own tradition. Research was no longer driven primarily to argue against the Protestants. Instead, the intramural scholastic battle revived. Not unrelated was the French challenge to the German

¹⁴⁰ Visitation records from the 16th century added to the picture. Wilhelm Eberhard Schwarz, ed., *Die Akten der Bistums Münster aus der Zeit Johannis von Hoya (1571–1573)* (Münster, 1913), pp. L, CIV, shows that confession was not even on the agenda for this visitation. Nonetheless, the visitors uncovered a number of priests who did not know the formula of absolution (p. cxii). Götz, *Pfarrbuch*, p. 120, notes that the pastor restricted himself to the Mass and singing the hours, employing a “Ko-operator” for all the pastoral work. Greving, *Ecks Pfarrbuch*, p. 71, shows that Eck delegated the pastoral work as well, but in order to be free to preach and to teach at the university.

¹⁴¹ For an “objective” motive, see Mehring, *Stift Lorch*, p. xxxiv. Götz, *Oberpfalz*, p. vii, chided an earlier Protestant author for failing to control his “heftiges Temperament.” But he also gently questions the too rosy picture of conditions given by Janssen-Pastor (p. 7 n. 2). This was particularly galling because his book was published by Pastor in the “Erläuterungen und Ergänzungen zu Janssens Geschichte des deutschen Volks.” He also conceded that “Worin ist es nicht lauter Gutes und Erbauliches, was uns die neu gefundenen Urkunden über die damaligen Zeitverhältnisse berichten, allein die objektive historische Wahrheit erforderte es gebieterisch, dass auch diese Züge ohne alle Beschönigung, so wie eben die Quellen darstellen, dem Gesamtbilde einverleibt werden. Je besser wir die Zeiten, ihre Anschauungen und ihr Leben kennen, um so leichter werden wir sie verstehen” (pp. vii–viii). And he used the immorality and “Erstarrung” of religious life to explain the success of the Reformation (p. 11). Götz edited a document from the church where he had been pastor: *Pfarrbuch*.

monopoly of scholarship on penance. In what was perhaps the most startling change, the Luther Renaissance produced a new Protestant understanding of Luther that shifted the focus from indulgences to sacramental penance, from charges of Catholic laxity to complaints of Catholic oppressiveness. Canon law also began to contend with theology as a way of understanding the medieval penitential system. Finally, the rosy picture of medieval piety suffered painful contradiction that presaged a decisive development in the scholarly understanding of penance and of medieval religion as a whole.

Much of the movement resulted from a changing of the guard, as a new generation replaced the pre-war cohort. Nikolaus Paulus was an exception, but even his work showed important shifts. His history of indulgences reminds one of the French general staff—always fighting the last war.¹⁴² Nonetheless, Paulus conceded that indulgences had not existed before the 11th century,¹⁴³ that indulgences for the dead were a late medieval innovation that had faced severe criticism,¹⁴⁴ and that, despite the repeated condemnation by popes and councils, the hierarchy was not innocent of the abuses that plagued the distribution of indulgences.¹⁴⁵ At the same time, he made a spirited defence of their religious rationale and usefulness.¹⁴⁶ He also emphasized the cultural and social benefits that sale of indulgences financed.¹⁴⁷

The newer scholarship tended to concentrate on penance proper. Building on the work of the preceding generation, Protestants and Catholics agreed that medieval penance had undergone extensive changes that resulted in three quite distinct periods in its history: an early medieval penance that continued the ancient emphasis upon penitential satisfaction as the key element; a high medieval penance beginning in the 11th century, in which confession and contrition were preponderant;

¹⁴² Nikolaus Paulus, *Geschichte des Ablasses im Mittelalter vom Ursprunge bis zur Mitte des 14. Jahrhunderts*, 3 vols (Paderborn, 1922–23). Many of Paulus' conclusions were anticipated in Emil Göller, *Der Ausbruch der Reformation und die spätmittelalterliche Ablasspraxis* (Freiburg, 1917). However Göller based himself upon Paulus' earlier research.

¹⁴³ Paulus, *Geschichte des Ablasses*, 1:1.

¹⁴⁴ Paulus, *Geschichte des Ablasses*, 2:160–74. See also his earlier “Der Ablass für die Verstorbenen am Ausgange des Mittelalters” *Zeitschrift für katholische Theologie* 24 (1900), 249–66.

¹⁴⁵ Paulus, *Geschichte des Ablasses*, 2:290.

¹⁴⁶ Paulus, *Geschichte des Ablasses*, 2:355–59.

¹⁴⁷ Paulus, *Geschichte des Ablasses*, 2:226–64. This chapter was published separately and found an English translation in the United States: *Indulgences as a Social Factor in the Middle Ages*, trans. J. Elliot Ross (New York, 1922).

and a late medieval penance beginning in the second half of the 13th century, in which priestly absolution became determinative.¹⁴⁸ Catholic research on the scholastics confirmed the traditional Protestant claim that scholasticism had clericalized the sacrament and bestowed unprecedented power on the priestly confessor.¹⁴⁹ Amédée Teetaert's history of lay confession is a perfect example, perhaps despite itself.¹⁵⁰ Ancient and early medieval penitential practice has no place for confession to the laity, because the confessor's role was to assign the proper penance, and the clergy alone possess the authority to impose penances.¹⁵¹ Beginning in the 11th century, the granting of absolution immediately after confession and the imposition of penance makes heartfelt sorrow central and remakes confession into an expression of that sorrow. But confession to a layperson could evoke and express heartfelt sorrow just as well as confession to a priest. In fact, the Church orders the faithful to confess to a layperson in cases of dire necessity.¹⁵² The 13th-century scholastic redefinition of penance and sacraments effectively excludes lay confessors as useless and misleading.¹⁵³ Although Teetaert assured modern theologians that at no time did the Church see lay confession

¹⁴⁸ For example, Bernhard Poschmann, *Die abendländische Kirchenbusse im frühen Mittelalter* (Breslau, 1930). Poschmann (pp. 2, 232) also conceded that a system of private penance simply did not exist in Rome, even as late as the 7th century. The articles in the *Dictionnaire de théologie catholique*, while clearly in line with Tridentine dogma and possessing some apologetic elements, were nonetheless well-informed and in the mainstream of current historiography; see *Dictionnaire de théologie catholique*, 15 vols (Paris, 1899–1950): “Attrition,” vol. 1, part 2 (1931), cols. 2235–2262; “Confession,” vol. 3, part 1 (1938), cols. 828–926; “Contrition,” vol. 3, part 1 (1938), cols. 1671–1694; “Pénitence,” vol. 12, part 1 (1933), cols. 947–1056; and “Satisfaction,” vol. 14, part 1 (1939), cols. 1129–1210. On the Protestant side, see Charlotte Zimmermann, *Die deutsche Beichte vom 9. Jahrhundert bis zur Reformation* (Weida, 1934).

¹⁴⁹ Although John T. McNeill, *The Celtic Penitentials and their Influence on Continental Christianity* (diss., University of Chicago, 1923), pp. 185–86, argues that private confession and *omnis utriusque sexus* both fostered an individualism that would undermine the Church.

¹⁵⁰ Amédée Teetaert, *La Confession aux laïques dans l'Église latine depuis le 8^e jusqu'au 14^e siècle* (Wetteren, 1926).

¹⁵¹ Teetaert, *Confession aux laïques*, pp. 23, 75. For a resume of the entire historical development, see pp. 477–85.

¹⁵² The clearest example is found in the immensely influential pseudo-Augustinian *De vera et falsa poenitentia*; see Teetaert, *Confession aux laïques*, p. 51. On its influence, see pp. 61, 74; and for Peter Lombard's acceptance of that obligation, see p. 142.

¹⁵³ Teetaert, *Confession aux laïques*, 299–300, credits Alexander of Hales with discovering the “true” difference between lay and sacerdotal confession. He credits another Franciscan, Duns Scotus, with completing the development of a purely sacerdotal confession; see pp. 392–95.

as sacramental in the Tridentine sense,¹⁵⁴ he conceded that some thinkers, including Albertus Magnus, did view lay confession as “sacramental” according to their understanding of the term.¹⁵⁵ Teetaert, however, did not address the implication that Church doctrine on the sacraments had undergone fundamental changes and that the modern Church’s teaching was late in coming.

Teetaert was willing to consider dangerous topics, perhaps, because his audience was Catholic and his book was part of an internal Catholic conversation. He never mentions Protestant scholars or Protestant objections. The discussion of contrition experienced a similar inward turn. Reviving the contritionist controversies of the 17th century, the Franciscan Valens Heynck sought to retrieve and rehabilitate the Scotist theology of penance.¹⁵⁶ Catholic scholars had met the Protestant complaint about attritionism by blaming Duns Scotus and his followers for a teaching that deviated from the orthodox Thomistic doctrine. Although Heynck was aware of Protestant interest in the topic, his real targets were the Thomists.¹⁵⁷ Heynck reaffirmed that neither Scotus nor Thomas understood contrition/attrition by the later distinction of sorrow based on love of God and sorrow based on fear of Hell. For both, contrition was the product of justifying grace [*gratia gratum faciens*], whereas

¹⁵⁴ Teetaert, *Confession aux laïques*, pp. 37, 251.

¹⁵⁵ On Albertus Magnus, see Teetaert, *Confession aux laïques*, pp. 319–20. The tradition of canon law was quite open about this. On Sicard of Cremona, see p. 218. On Huguccio, see p. 226. On the Glossa Ordinaria of Johannes Teutonicus, see p. 334. Artur Landgraf, “Das Sacramentum in voto in der Frühscholastik,” in *Mélanges Mandonnet. Études d’histoire littéraire et doctrinale du Moyen Âge*, 2 vols (Paris, 1930), 2:119: “Der Frühscholastik dagegen und die ihr zeitlich nahestehenden Kanonistik hatte von einer Kausalität der Sakramente nicht mehr als eine dunkle Ahnung.”

¹⁵⁶ Valens Heynck, “Zur Lehre von der unvollkommenen Reue in der Skotistenschule des ausgehenden 15. Jahrhunderts,” *Franziskanische Studien* 24 (1937), 18–58; idem, “Untersuchungen über die Reuelehre der tridentinischen Zeit,” *Franziskanische Studien* 29 (1942), 150–82; idem, “Attritio sufficiens,” *Franziskanische Studien* 31 (1949), 76–134. See also Notker Krautwig, *Die Grundlagen der Busslehre des J. Duns Scotus* (Freiburg, 1938). Scotus conceded that true contrition attained forgiveness by itself outside of the sacrament of penance. In confession, however, absolution effected forgiveness, and attrition sufficed. But both routes to forgiveness were based on *acceptatio*, i.e., God’s willingness not to impute sin, rather than the objective human goodness that both early scholastic contritionism and the *habitus* theory presupposed.

¹⁵⁷ In particular, Henri Dondaine’s *L’attrition suffisante*, (Paris, 1943), in which the Dominican Thomist called for a “Retour a Saint Thomas.” On Heynck and Luther, see Valens Heynck, “Die Verteidigung der Sakramentenlehre des Duns Scotus durch den hl. John Fisher gegen die Anschuldigung Luthers,” *Franziskanische Studien* 24 (1937), 147–70.

attrition resulted from initial grace [*gratia gratis data*].¹⁵⁸ Love and fear were found in both contrition and attrition. According to Heynck, later Scotists, who nonetheless remained faithful in spirit to the master, as well as the otherwise Thomistic Jesuits began the successful, and beneficial, spread of attritionism throughout the modern Church.¹⁵⁹ Indicative of the slipping predominance of Thomism, Heynck presented Scotus's teaching as a corrective to the "impractical" teaching of Aquinas.¹⁶⁰ Heynck's work was an early indication of the increasing importance of late medieval scholasticism for an understanding of the sacrament.

Most Catholic scholarship continued to be apologetic, even if it was now intramural. Artur Landgraf was an exception and offered a new "agenda"—scholarship for its own sake.¹⁶¹ In a remarkable essay on the "Foundations for Understanding the Doctrine of Penance in Early and High Scholasticism," Landgraf laid out the tasks that faced historians of the sacrament:¹⁶² Studies of individual scholastics should give way to histories of the long-term development of doctrines. To do that required exhaustive research of all the surviving texts, especially those written by less well-known or accomplished thinkers. Research should not be limited to theological or canon law texts devoted specifically to penance but should also include, for example, biblical commentaries. Great care must be taken not to assume that medieval terminology was the same as modern usage. Nowhere does Landgraf give an explanation of why one should devote such time and effort to the study of a rite that had only tenuous ties to the present. The list of issues he presented is based

¹⁵⁸ Heynck, "Unvollkommenen Reue," p. 22.

¹⁵⁹ Heynck, "Attritio sufficiens," pp. 132–34.

¹⁶⁰ Heynck, "Attritio sufficiens," p. 134 n. 163. Heynck also pointed out that Thomas's teaching on contrition/attrition was rarely, if ever, mentioned at Trent; see Valens Heynck, "Zum Problem der unvollkommenen Reue auf dem Konzil von Trient," in *Das Weltkonzil von Trient*, ed. Schreiber, 279. By contrast, the Dominican Joseph Périnelle argued in his *L'Attrition d'après le concile de Trente et d'après saint Thomas d'Aquin* (Kain, 1927) that the Council favoured a Thomistic solution. Also reaffirming the determinative importance of Aquinas for the dogma on penance is Ott, "Das Opusculum des hl. Thomas von Aquin *De forma absolutionis*," pp. 99–135.

¹⁶¹ For example, Artur Landgraf, "Der früh-scholastische Streit um die potestas quam Christus potuit dare servis et non dedit," *Gregorianum* 15 (1934), 524: "Eine für den Historiker verlockende Aufgabe wäre es, den Werdegang der verschiedenen dogmatischen Traktate zu verfolgen und aufzudecken, welche Umstände ihre Entwicklung zu einem Eigenleben bedingt haben, und wie dann wiederum innerhalb der einzelnen grundlegenden Änderungen der Systematik und des Aufbaues erfolgt sind." In Landgraf's articles, the footnotes tend to dwarf the text.

¹⁶² Artur Landgraf, "Grundlagen für ein Verständnis der Busslehre der Früh- und Hochscholastik," *Zeitschrift für katholische Theologie* 51 (1927), 161–94.

upon historical discontinuity, for example, the tension between contrition and confession in the period before high scholasticism. But then, with no fanfare or indication that he is entering into a confessional minefield, he asks why justification was always ascribed to faith.¹⁶³ Why was faith always labelled as *prima gratia*? Why was preparation for justification exclusively assigned to acts of faith? It is particularly telling that in his discussion of faith and justification Landgraf nowhere mentions Luther. Landgraf undoubtedly had his own religious commitments, but one would be hard-pressed to find them here.

While Catholics turned away from Protestant critiques, the Luther Renaissance, led by Karl Holl, replaced the liberal Luther with an orthodox one. The key event in Luther's development as a reformer was no longer the indulgence controversy, during which time Luther was still quite Catholic, but the "Turmerlebnis" [Tower experience], in which Luther found a gracious God. Helmut Appel's 1938 study of Luther and the late medieval consolation literature assumes the new theological landscape.¹⁶⁴ Comparing mystical, scholastic, *devotio moderna*, and *ars moriendi* manuals to Luther's solution to the problem of *Anfechtung* (temptation, trial, affliction, tribulation), Appel provided the medieval context of Luther's crisis. The Church was well aware of the problem of scrupulosity among monks and those whom they influenced. Johannes Tauler (c.1300–61), Heinrich Seuse (c.1300–66), Jean Gerson (1363–1429), and others offered guidance for what was viewed as either a spiritual malady or an opportunity for spiritual growth. In Appel's opinion, the "healthy" Luther had provided the real solution.¹⁶⁵ Although Appel did not yet pinpoint confession as a cause of *Anfechtung*,¹⁶⁶ the stage was set for treating penance as one of

¹⁶³ Landgraf, "Grundlagen," 179–87; on p. 179 he refers to *fides* as the "Kernproblem." He restates the centrality of faith for justification in "Das Sacramentum in voto in der Frühscholastik," *Mélanges Mandonnet*, 2:101. In that same article, he denies that early scholasticism ascribed an independent causality to the sacraments but, instead, saw direct divine causality.

¹⁶⁴ Helmut Appel, *Anfechtung und Trost im Spätmittelalter und bei Luther* (Leipzig, 1938). Appel makes clear his debt to the new understanding of Luther (pp. 105 n. 1, 125 n. 1). For a brief summary of that understanding, see 126. Paulus, *Johann Tetzel der Ablassprediger*, had already indicated that the indulgence controversy was the occasion, not the cause, of Luther's break with Rome. See also Emil Göller, *Der Ausbruch der Reformation und die spätmittelalterliche Ablasspraxis: im Anschluss an den Ablasstraktat des Freiburger Professors Johannes Pfeffer von Weidenberg* (Freiburg, 1917), p. 1.

¹⁶⁵ Appel, *Anfechtung und Trost*, pp. 128–29.

¹⁶⁶ He only mentions too frequent confession as a symptom and aggravating cause; see Appel, *Anfechtung und Trost*, p. 57. Instead, he credited "die grosse Unruhe und Weltangst und die schleichende Verzweiflung" (p. 3).

the primary instruments of Catholic oppression of consciences. The focus on penance would address a problem that Appel's study created for understanding the Reformation as a popular movement since in his reading, *Anfechtung* was a problem of a mainly monastic religious elite.¹⁶⁷ In any event, Protestant critiques of confession now targeted its oppressive aspects, not its laxity.

The Catholic turn inward was reinforced by the growing influence of canon law studies. The revised Code (1917) effected a fundamental updating of canon law that was also more systematic and uniform. Much of the medieval and early modern tradition was retained, but it was clear to the redactors that this material came from a time very different than their own. A proper understanding required study of the law's evolution and context.¹⁶⁸ Histories written to meet this need showed that medieval canonists made penance less sacramental and more disciplinary in that they represented penance as an exercise of jurisdiction by the hierarchy.¹⁶⁹ Overall, modern historians of canon

¹⁶⁷ For Meister Eckhart, sin was only one, and not the most frequent, cause of *Anfechtung*; see Appel, *Anfechtung und Trost*, p. 13. Seuse gave it much more weight; see Appel, *Anfechtung und Trost*, pp. 14–17. Albert Auer, *Johannes von Dambach und die Trostbücher vom 11. bis zum 16. Jahrhundert* (Münster, 1928), emphasized the stoic roots of this literature. See also Franz Dibelius, "Von der Beichte in den oranien-nassausischen Gebieten," *Der Katholik* 75 (1895), 96, on a 1540 instruction for Protestant pastors that specified monks as those who had suffered from oppressed consciences.

¹⁶⁸ Canon 6 of the new code prescribed that "ancient legislation which has been incorporated into the new law without any or with but verbal changes, retains its former force and will have to be interpreted in the same sense as it was interpreted in the past by approved authors." Cited in Connell Clinton, *The Paschal Precept. An historical synopsis and commentary* (diss., Catholic University of America, 1932), p. 7.

¹⁶⁹ Stephan Kuttner, "Ecclesia de occultis non iudicat. Problemata ex doctrina poenali decretistarum et decretalistarum a Gratiano usque ad Gregorium PP. IX," in *Acta Congressus Juridici Internationale... Romae 12–17 Novembris 1934. Pontificium Institutum Utriusque Juris*, 5 vols. (Rome, 1935, 1937), 3:244–46. By contrast with Aquinas, who clearly separated the *potestas jurisdictionis* from the *potestas sacramentalis*, late medieval and early modern canonists tended to see them as simply parts of a unitary *ius episcopale*; see Nikolaus Hilling, "Die Bedeutung der iurisdictio voluntaria und involuntaria im römischen Recht des Mittelalters und der Neuzeit," *Archiv für katholischen Kirchenrecht* 105 (1925), 454, 457. The canonists also extended the notion of jurisdiction to sacramental penance by identifying it with the keys. As a result, they claimed that forgiveness of sins required an exercise of both sacramental and jurisdictional powers. See Martinien Van De Kerckhove, "La notion de jurisdiction dans la doctrine des décrétistes et de premiers décrétalistes de Gratien (1140) à Bernard de Bottone (1250)," *Études franciscaines* 49 (1937), 445–46, 452–53. The interest in jurisdiction had already shown up in Peter Anton Kirsch, "Der Sacerdos proprius in der abendländlichen Kirche vor dem Jahre 1215," *Archiv für katholischen Kirchenrecht* 84 (1904), 522–37. Two examples of the impact of the new Code are Edward Vincent Dargin, *Reserved Cases according to the Code of Canon Law* (diss., Catholic University of America, 1924); and Francis Joseph Fazzalaro, *The Place for the Hearing of Confessions: A Historical Synopsis and a Commentary* (diss., Catholic University of America, 1950). Scholastic theologians such as Albertus

law emphasized sacrament's social importance, its role in modifying behaviour, and its exercise of hegemonic power. Non-legal scholarship would take up the same themes in later decades.

The most important interwar rethinking of the history of penance, however, was provided by Peter Browe in a series of studies on the frequency of both penance and communion.¹⁷⁰ Earlier Catholic scholarship had admitted that the Church fought a losing battle in the Middle Ages to encourage the laity to confess and receive the Eucharist often.¹⁷¹ Browe's work showed that the frequency was even less than had been believed¹⁷² and that the drought had extended from antiquity until the modern era. He also argued that the hierarchy, far from urging frequency, had often opposed it.¹⁷³ The last opposition to frequent communion was only overcome in the early 20th century.¹⁷⁴ Browe's work raised important questions about the medieval understanding of "pastoral care" and the very nature of medieval religiosity. Clearly, one conclusion that could be drawn is that neither reception of the Eucharist nor confession had the centrality accorded them since the Counter Reformation.¹⁷⁵ The late development of the parish system

Magnus and Thomas Aquinas, though they drew upon canon law, were very critical of it and its use in theology, especially in sacramental theology. See Martin Grabmann, "Die Erörterung der Frage, ob die Kirche besser durch einen guten Juristen oder durch einen Theologen regiert werde, bei Gottfried von Fontaines (d. 1306) und Augustinus Triumphus von Ancona (d. 1328)," in *Festschrift Eduard Eichmann*, pp. 3–4.

¹⁷⁰ Peter Browe, "Die öftere Kommunion der Laien im Mittelalter," *Bonner Zeitschrift für Theologie und Seelsorge* 6 (1929), 1–28; idem, "Die Kommunionvorbereitung im Mittelalter," *Zeitschrift für katholische Theologie* 56 (1932), 375–415; idem, "Die Pflichtbeichte im Mittelalter," *Zeitschrift für katholische Theologie* 57 (1933), 335–83. Browe also chronicled an initial disinterest and later great difficulty that theologians and canonists had with the "Beichtsigel"; see "Das Beichtgeheimnis im Altertum und Mittelalter," *Scholastik* 9 (1934), 1–57.

¹⁷¹ J. B. Dalgairns, *The Holy Communion: Its Philosophy, Theology, and Practice*, 3rd ed. (Dublin, 1868), p. 184. According to Dalgairns, infrequent communion was only common in the 4th century and again in the 10th–13th centuries.

¹⁷² Rome was the worst in this regard; see Browe, "Die öftere Kommunion," p. 18. Browe made excellent use of the *Pfarrbücher* to provide numbers of communicants and frequency in the later Middle Ages; see Browe, "Die öftere Kommunion," pp. 26–27.

¹⁷³ The attempt by Matthaeus of Krakau (d. 1410) to encourage frequent communion was condemned, and he was made to recant; see Browe, "Die öftere Kommunion," pp. 22–23. The Hussites eventually took it up. Generally, a Christian had to ask special permission to receive the Eucharist beyond the three high feasts of Easter, Christmas, and Pentecost (p. 14).

¹⁷⁴ By a decree of Pius X in 1905; see Browe, "Die öftere Kommunion," p. 28.

¹⁷⁵ Which ran counter to both Catholic (Bernhard Poschmann, *Die abendländische Kirchenbusse im frühen Mittelalter* [Breslau, 1930], pp. 235–36) and Protestant interpretations (McNeill, *Celtic Penitentials*, p. 1).

would also reflect that.¹⁷⁶ The extremely limited knowledge expected of the good Christian also required little institutional support since most instruction could be and was done in the family.¹⁷⁷ The realization that the pre-modern Church, both lay and clerical, had held a basically different conception of the theory and practice of penance would take time to be absorbed by scholars. But that realization made possible treatments of medieval and early modern penance with no precedent in the tradition.

The Post-War Era: 1940s–1960s

A growing secularism characterized the scholarship on penance in the second half of the 20th century. The supernatural receded as the natural became normative. Sociology and psychology contended with theology for dominance.¹⁷⁸ These developments may owe something to the growth of medieval studies as a discipline. Interest shifted from clerical doctrine to the place of penance in the larger society, as well as to the impact of penance upon the individual and groups. The immediate post-war decades saw a concern for moral theology,¹⁷⁹ the history of piety, and the institutional significance of the sacrament. The predominant approach may be described as legal-sociological. And the sources of choice were very often the *pastoralia*, whose study the earlier Catholic scholarship had begun but whose range was extended and whose content more closely analysed to uncover their personal and social impact. Pastoral care or the *cura animarum* took centre stage.¹⁸⁰

¹⁷⁶ Browe, "Die Pflichtbeichte im Mittelalter," pp. 363–65.

¹⁷⁷ Peter Browe, "Der Beichtunterricht im Mittelalter," *Theologie und Glaube* 26 (1934), 427–42.

¹⁷⁸ The role of naturalism and psychology was noted and exemplified by Josef Georg Ziegler, *Die Ehelehre der Pönitentialsummen von 1200–1350; eine Untersuchung zur Geschichte der Moral- und Pastoraltheologie* (Regensburg, 1956). The works of Gabriel Le Bras are veritable manifestoes: *Introduction à l'histoire de la pratique religieuse en France*, 2 vols (Paris, 1942–45); idem, *Institutions ecclésiastiques de la chrétienté médiévale*, 2 vols (Paris, 1964–65).

¹⁷⁹ For example, Johannes Gründel, *Die Lehre von den Umständen der menschlichen Handlung im Mittelalter* (Münster, 1963); and A. M. Meier, *Das peccatum mortale ex toto genere suo* (Regensburg, 1966). Bernhard Haering and Louis Vereecke, "La théologie morale de Saint Thomas d'Aquin à Saint Alphonse de Ligouri," *Nouvelle revue théologique* (1955), 673–92, argues that the legalism of penitential theology had stifled true moral theology but that the time had come for a renewal.

¹⁸⁰ John T. McNeill, *A History of the Cure of Souls* (New York, 1951).

Also new was the growing role of British scholars and studies of late medieval England.

The publication of Paul Anciaux's *La Théologie du sacrement de pénitence au XII^e siècle* and Bernhard Poschmann's *Busse und Letzte Ölung* culminated the recovery of the medieval theology of penance. Anciaux's dissertation presented new research, usually in the form of long passages from otherwise inaccessible manuscripts, but its real importance was as a comprehensive summary and reconfirmation of the newer scholarship.¹⁸¹ The 12th-century scholastics in general deny penance the status of a New Testament sacrament because it predated Christ and because the sign does not effect what it signifies, as do the other sacraments.¹⁸² Additionally, penitents rather than priests effect forgiveness through their contrition. For the early scholastics, confession is simply an ecclesiastical ordinance based on the Epistle of James.¹⁸³ At most, the priest manages the temporal punishment due sin. Anciaux also accepted the centrality of Abelard for the entire development of penitential theology,¹⁸⁴ but he denied that Abelard's limitation of priestly power ran counter to patristic and early medieval doctrine.¹⁸⁵ In effect, Anciaux made clear that the modern Church's understanding of the sacrament and the power of the priest had no pre-scholastic precedent and was only put in place by the great scholastics of the 13th century. Not surprisingly, Anciaux took up the notion of evolution to describe the Church's teaching.¹⁸⁶

Poschmann also accepted the history of the sacrament that recent scholarship had developed—with the interesting absence of Teetaert's work on lay confession—and made clear the contemporary theological concerns that had driven much of it. Liturgical reform was in the air in the decade before Vatican II (1962–65), and Poschmann's work

¹⁸¹ Paul Anciaux, *La théologie du Sacrement de Pénitence au XII^e siècle* (Louvain and Gembloux, 1949); Bernhard Poschmann, *Busse und Letzte Ölung* (Freiburg, 1951). Although Anciaux humbly claims only to have collected the texts necessary for a synthesis, he actually provides one.

¹⁸² Anciaux, *Théologie*, pp. 163, 352–53, 392, 604. The canonists generally and some theologians considered only solemn penance as sacramental; see pp. 356, 391. The weakness of the sacramentality of priestly absolution may have led thinkers to rely more on canonistic ideas of jurisdiction; see pp. 607, 612.

¹⁸³ Anciaux, *Théologie*, p. 610.

¹⁸⁴ Anciaux, *Théologie*, pp. 273–74, 352.

¹⁸⁵ Anciaux, *Théologie*, pp. 54, 163, 608–09. In general, Anciaux distinguishes himself from both Protestants and conservative Catholics; see p. 3.

¹⁸⁶ Anciaux, *Théologie*, p. 1.

placed recent scholarship at the disposal of the reformers. While, of course, not questioning the basic sacramental understanding of penance developed by the scholastics and ratified by Trent, he clearly was interested in moving on. His review of Tridentine and post-Tridentine attrition controversies discussed most of the writers already mentioned in this essay and brought the argument up to his own time.¹⁸⁷ Trent had failed to provide an authoritative ruling, but its evenhandedness had implicitly given the Scotist and attritionist party a standing previously lacking. And despite the best efforts of scholars such as Morin who pointed out its incompatibility with the tradition, attritionism became and remained the dominant teaching of modern theologians. At Anciaux's writing, the debated still remained unresolved.¹⁸⁸ However, drawing a line under the entire debate and the medieval evolution of the sacrament, Poschmann suggested that theologians had reached an impasse and that the Church should return to the ancient understanding of penance as a reconciliation to the Church that entailed divine forgiveness.¹⁸⁹

Post-Vatican II liturgists agreed. The Catechism of the Roman Church refers to "The Sacrament of Penance and Reconciliation" or simply "Sacrament of Reconciliation."¹⁹⁰ Herbert Vorgrimler's 1978

¹⁸⁷ Bernhard Poschmann, *Penance and the Anointing of the Sick* (New York, 1964), pp. 195–206.

¹⁸⁸ Alexander VII's 1667 decree forbidding defamation, censures, and offensive imputations until the papacy had settled the matter remains in force; see Poschmann, *Penance*, p. 207. See also Gordon J. Spykman, *Attrition and Contrition at the Council of Trent* (Kampen, 1955).

¹⁸⁹ Poschmann, *Penance*, pp. 208–09. Artur Landgraf, "Der zur Nachlassung der Schuld notwendige Grad der contrition," *Dogmengeschichte der Frühscholastik*, Teil 3, Bd. 2 (Regensburg, 1955), pp. 244–45 [originally published in *Mélanges Joseph de Ghellinck, S. J.* (Gembloux, 1951), pp. 449–87], hastened to warn that early scholastic theology was fundamentally different from the modern theology on the sacrament. Bernhard Poschmann, *Der Ablass im Lichte der Bussgeschichte* (Bonn, 1948), is even more daring since he argues that, in line with patristic thought, all indulgences (not just those for the dead) are simply supplications by the Church, which is morally (not juridically) sure of a divine response. Trent is clearly not a source. Poschmann only mentions it on the last page to assert that his argument does not run afoul of its decrees. Ludwig Hödl, *Die Geschichte der scholastischen Literatur und der Theologie der Schlüsselgewalt* (Münster, 1960), was critical of the medieval separation of interior and exterior penance in a way that points toward post-Vatican II efforts to give a larger ecclesial dimension to the sacrament.

¹⁹⁰ The first title is given to the entire article on penance, and the second in the title of subsection 2. "Confession" and "Reconciliation" are mentioned in the text. The catechism also offers an attritionist position; see *Catechism of the Catholic Church* (Liguori, Mo., 1994), pp. 357–58, 364–65 (para. 1422–25, 1451–54). "Conversion" replaces

history of the sacrament shows the impact of Vatican II. Accepting the findings of the previous century, Vorgrimler viewed Vatican II as the beginning of a new era for which the medieval tradition had limited value.¹⁹¹ Trent and the tradition had become obstacles rather than inspirations. Research into the immediate context, problems and concerns of the Council Fathers, usually based on preliminary discussions and early drafts of conciliar decrees, served to deconstruct the conciliar doctrine. An ecumenical appreciation of the Protestant reformers' justified objections and their positive proposals for the sacrament implicitly criticized Trent and provided support for post Vatican II innovations.¹⁹² Louis Braeckmans' study of the requirement of confession before the reception of the Eucharist argued that it had first been proposed by 13th-century scholastics and that Trent's decree reaffirming the scholastic doctrine could be overridden because it had not been a dogmatic constitution.¹⁹³ Overall, the diminution of apologetics and the loss of contemporary theological interest in medieval and early modern penance caused the marginalization of doctrinal history.¹⁹⁴

"contrition" as the focal point of the penitent's action. Avoidance of contrition/attrition language also characterized Trent; see Heynck, "Zum Problem der unvollkommenen Reue," in *Weltkonzil*, ed. Schreiber, p. 256. The "keys" are interpreted primarily as inclusion and exclusion from communion with the Church, which inclusion also determines communion with God; see *Catechism*, 363 (para. 1445).

¹⁹¹ Herbert Vorgrimler and Bernhard Poschmann, *Busse und Krankensalbung* (Freiburg, 1978). Vorgrimler was a follower of Karl Rahner on the sacrament.

¹⁹² Karl Binder, "Streiflichter zur Beichte und Eucharistie in katholischer und protestantischer Sicht," *Wissenschaft im Dienste des Glaubens; Festschrift für Abt. Dr. Hermann Peichl, O.S.B., Präsident der Wiener Katholischen Akademie, dargeboten zum 35. Abtjubiläum*, ed. Josef Kissner et al. (Vienna, 1965), pp. 173–94.

¹⁹³ Louis Braeckmans, *Confession et Communion au Moyen Age et au Concile de Trente* (Gembloux, 1971). Braeckmans claimed for the modern Church the same right to innovate as the scholastics exercised. See also, for post-Vatican II concerns, Semana Española de Teología, *El sacramento de la penitencia* (Madrid, 1972); André Duval, "Le Concile de Trente et la confession," in his *Des sacrements au Concile de Trente* (Paris, 1985), pp. 151–222; Universität Trier, *Dienste der Versöhnung: Umkehr, Busse und Beichte: Beiträge zu ihrer Theologie und Praxis* (Trier, 1974); Hans-Peter Arendt, *Busssakrament und Einzelbeichte. Die tridentinischen Lehraussagen über das Sündenbekenntnis und ihre Verbindlichkeit für die Reform des Busssakramentes* (Freiburg, 1981).

¹⁹⁴ Another factor may have been the Catholic realization that modern Protestantism reflected modern culture more than the reformers on penitential issues; see Johann Peter Steffes, "Die Lehrbestimmungen des Tridentinums und die Moderne Weltanschauung," in *Weltkonzil*, ed. Schreiber, pp. 55–56. See for example, see Josef A. Jungmann, *Die lateinischen Bussriten in ihrer geschichtlichen Entwicklung* (Innsbruck, 1932), p. 311.

Meanwhile, Lutheran treatments of penance experienced a pastoral turn that resulted in a more positive reassessment.¹⁹⁵ Luther's insistence upon a suitably reformed auricular confession as the best remedy for *Anfechtung*, and the realization that Church law was not fundamental to *Anfechtung* but only exacerbated the despair caused by divine law, made the sacrament more important for Lutheran self-understanding.¹⁹⁶ There was also a greater willingness to place Luther firmly into his late medieval scholastic context.¹⁹⁷ By contrast, the Calvinist separation of the subjective from the disciplinary components of penance and the effective elimination of the subjective suggested to Lutherans that the Calvinist Reformation had a different starting point and goal than the consolation of oppressed consciences.¹⁹⁸

In the later Middle Ages, Catholic penance had become the legal nexus between the institutional church and the laity. Pierre Michaud-Quantin and Leonard Boyle mined the *summae confessorum* for access to the workings of that nexus. Michaud-Quantin analysed early manuals by Parisian theologians on the eve of Lateran IV and the transformation of the genre at the hands of the mendicant canon lawyers, especially Raymond of Peñafort (1175–1275).¹⁹⁹ The overall impact of the latter

¹⁹⁵ Ernst Kinder, "Beichte und Absolution nach den lutherischen Bekenntnisschriften," *Theologische Literaturzeitung* 77, no. 2 (1952), 543–50.

¹⁹⁶ Leonhard Fendt, "Luthers Reformation der Beichte," *Luther; Mitteilungen der Luthergesellschaft* 24, no. 3 (1953), 121–37. On the continuation of Catholic practices by Luther and the early Lutheran Churches, see Ernst Walter Zeeden, *Katholische Überlieferungen in den lutherischen Kirchenordnungen des 16. Jahrhunderts* (Münster, 1959), p. 5, who borrowed a page from earlier Catholic apologetic by distinguishing doctrine from outward form.

¹⁹⁷ Reinhard Schwarz, *Vorgeschichte der reformatorischen Busstheologie* (Berlin, 1968); Heiko Oberman, *The Harvest of Medieval Theology: Gabriel Biel and late medieval nominalism* (Cambridge, Mass., 1963); Steven Ozment, *Homo Spiritualis. A comparative study of the anthropology of Johannes Tauler, Jean Gerson and Martin Luther (1509–16) in the context of their theological thought* (Leiden, 1969).

¹⁹⁸ Erich Roth, *Die Privatbeichte und Schlüsselgewalt in der Theologie der Reformatoren* (Gütersloh, 1952), pp. 149–50. Although Calvin repeated the standard Protestant criticism of the terrors of confession, in general he agreed with the Catholics that oppressed consciences were not the major challenge facing the Church. For Calvin, Christians who turned a blind eye to their own failings and those who actually gloried in their supposed virtue were the greater problem.

¹⁹⁹ Pierre Michaud-Quantin, "A propos des premiers *summae confessorum*, théologie et droit canonique," *Recherches de théologie ancienne et médiévale* 26 (1959), 264–306; idem, *Sommes de casuistique et manuels de confession au Moyen Âge (XII–XVI siècles)* (Louvain, 1962). New editions of the foundational *summae* also appeared, e.g., Thomas of Chobham, *Summa confessorum*, ed. F. Broomfield (Louvain and Paris, 1968); and Robert of Flamborough, *Liber poenitentialis*, ed. Firth (n. 6 above).

was to “legalize” the sacrament so that cases and individual infractions rather than the penitent and spiritual growth formed its heart. Quite telling was the shift from discussions of virtues and vices characteristic of earlier works to Peñafort’s focus upon the Seven Deadly Sins, i.e., the vices, to the exclusion of the virtues. Michaud-Quantin also challenged the modern belief that the manuals fixated upon sexual sins.²⁰⁰ He found an interest, of course, but not disproportionate. Usury and economic crimes received at least as much attention. Leonard Boyle had a more sanguine view of the manuals. As with much British scholarship on the late medieval Church, Boyle generally credits the clergy with good intentions, some learning, and much effort.²⁰¹ His benign reading began with mid 13th-century manuals and followed the evolution of the genre up to the eve of the Reformation.²⁰² In contrast to Michaud-Quantin, Boyle saw development to a more interior form of Christianity and a more moral, as opposed to legal, understanding of penance. That process began with the 11th-century pseudo-Augustinian *De vera et falsa*

²⁰⁰ Michaud-Quantin, *Sommes de casuistique*, pp. 108–09.

²⁰¹ For example, Rosalind Hill, “Public Penance: Some Problems of a 13th Century Bishop,” *History*, n.s. 36 (1951), 213–26.

²⁰² Boyle’s writings spanned the decades from the 1950s to the 1980s. For example: Leonard E. Boyle, “The Oculus sacerdotis and some other works of William Pagula,” *Transactions of the Royal Historical Society* 5 ser., 5 (1955), 81–110; idem, *The “Summa Summarum” and some other English works of Canon Law*, ed. Stephen Kuttner and J. Joseph Ryan (Vatican City, 1965), pp. 415–56; idem, “Three English Pastoral Summae and a ‘Magister Galienus,’” *Studia Gratiana* 11 (1967), 133–44; idem, “The Summa Confessorum of John of Freiburg and the Popularization of the Moral Teaching of St Thomas and Some of His Contemporaries,” in *St Thomas Aquinas, 1274–1974, Commemorative Studies*, ed. Armand A. Maurer, 2 vols (Toronto, 1974), 1:245–68; idem, “The Fourth Lateran Council and Manuals of Popular Theology,” *The Popular Literature of Medieval England*, ed. Thomas J. Heffernan (Knoxville, 1985), pp. 30–43. This last piece has an interesting chart of types of pastoralia (p. 38). See also Boyle’s “Innocent III and Vernacular Versions of Scripture,” *The Bible in the Medieval World. Essays in Memory of Beryl Smalley*, ed. Katherine Walsh and Diana Wood (Oxford, 1985), pp. 97–107. Literary historians showed new interest in the vernacular versions of the pastoralia: Rudolf Stanka, *Die Summa des Berthold von Freiburg. eine rechtsgeschichtliche Untersuchung* (Vienna, 1937); D. W. Robertson, Jr., “The *Manuel des Péchés* and an English Episcopal Decree,” *Modern Language Notes* 9 (1945), 439–47; idem, “The Cultural Tradition of Handlyng Synne,” *Speculum* 22 (1947), 162–85. On the classical sources of some penitential material, see idem, “A Note on the Classical Origin of ‘Circumstances’ in the Medieval Confessional,” *Studies in Philology* 43 (1946), 6–14. Closely related was interest in the seven deadly sins: Morton Wilfred Bloomfield, *The Seven Deadly Sins: An Introduction to the History of a Religious Concept, with Special Reference to Medieval English Literature* (East Lansing, Mich., 1952); Anton Voegtli, “Woher stammt das schema der Hauptsünde,” *Theologische Quartalschrift* 122 (1941), 217–37. See also, Marie Gothein, “Die Todsünden,” *Archiv für Religionswissenschaft* 10 (1907), 416–84.

penitentia [Of true and false penance/penitence] and Abelard, continued with Lateran IV and the early canonistic *summae confessorum*, and came to fruition in the later pastoral manuals.²⁰³ Late medieval pastoralia followed John of Freiburg's (c.1250–1314) influential *Summa Confessorum* in combining canon law casuistry with Thomistic moral theology. Often written by university-trained parish priests, these manuals were intensely practical. However, neither Michaud-Quantin nor Boyle dealt with the extent of their impact upon either the clergy or the laity.²⁰⁴

Other evidence, however, painted a less rosy picture of the actual practice of confession. Alois Lamott noted that the sacrament of penance was often lacking in printed Speyer liturgies, or was only represented by a simple formula of absolution.²⁰⁵ Liturgies from the diocese of Freising lacked any penitential rubrics before the 11th century, and the first printed liturgy (1484) lacked any mention of penance, as did many other early printed liturgical manuals from southern Germany. Not surprisingly, visitations in that region revealed a widespread ignorance of the proper conduct of confession and of the formula of absolution.²⁰⁶ Visitations in the Swiss parts of the diocese of Constance in 1586 reveal much the same conditions.²⁰⁷ French religious sociology argued that sacramental penance was peripheral to the religious life of most Christians.²⁰⁸ In Flanders, even the cloistered religious often did not confess more than once a year.²⁰⁹ And since the *cura animarum* in most places consisted of that annual confession, the extent of the clerical Church's impact upon the laity became increasingly questionable.²¹⁰

²⁰³ Ziegler, *Die Ehelehre der Pönitentialsommen von 1200–1350*, shares this optimistic understanding of developments.

²⁰⁴ Vernacular versions of the manuals give some evidence; see Stanka, *Die Summa des Berthold von Freiburg*.

²⁰⁵ Alois Lamott, *Das Speyerer Diözesanrituale von 1512–1932. seine Geschichte und seine Ordines zur Sakramentenliturgie* (Speyer, 1961), p. 165.

²⁰⁶ Bernhard Mattes, *Die Spendung der Sakramente nach den Freisinger Ritualien; eine Untersuchung der handschriftlichen und gedruckten Quellen* (Munich, 1967), pp. 200–02.

²⁰⁷ Oskar Vasella, *Das Visitationsprotokoll über den schweizerischen Klerus des Bistums Konstanz von 1586* (Freiburg-Schweiz [Bern], 1963).

²⁰⁸ Michel Mollat, *La vie et pratique religieuses au XIV^e siècle et dans la première partie du XV^e, principalement en France* (Paris, 1963), part 1, pp. 71–72, argues that believers for the most part confessed annually, but no more. Even so, abstinence was not rare.

²⁰⁹ Jacques Toussaert, *Le Sentiment religieux en Flandre à la fin du Moyen Age* (Paris, 1963), p. 116.

²¹⁰ Louis Binz, *Vie religieuse et réforme ecclésiastique dans le diocèse de Genève pendant le grand schisme et la crise conciliaire (1378–1450)* (Geneva, 1973), p. 403. E. Delaruelle, E.-R. Labande, and Paul Ourliac, *L'Église au temps du Grand Schisme et de la crise conciliaire (1378–1449)* (Paris, 1964), pp. 656–64, appears quite dated, since for confession it

The Social Turn: The 1970s and Beyond

The history of penance experienced a quiet revolution beginning in the early 1970s. Although questions from the Catholic and Protestant scholarly traditions remained significant, the secular tradition threatened their predominance. Theological history was mainly left to Protestant historians, while social theory presided elsewhere. The United States and Italy became very important centres of research. Lay scholars swelled in both numbers and influence as the universities, especially in the United States, grew at a remarkable rate. Early modern historians shifted their attention to the later Reformation and the Counter-Reformation. Students of both the medieval and early modern sacrament became increasingly interested in its implementation, its impact, and its role in the structuring of church and society. Often, religion itself was subsumed under the larger category of "culture," while Frömmigkeit-Spiritualité-Spirituality became transpersonal.

Lacking the apologetic impulse that had driven scholarship since the Reformation, Catholics made few contributions to the history of theology.²¹¹ The Protestant tradition of scholarship continued, however, and in some cases revived earlier apologetically charged issues, although, given the changes in Catholicism, it is not clear how divisive those issues remained. Steven Ozment's *Reformation in the Cities* took up the neo-orthodox position that Luther's experience of the oppressed conscience and the consolation of faith defined the Protestant rejection of Catholicism. Drawing upon both late medieval manuals and early Reformation pamphlets, he argued that the same combination of oppression, often tied to confession, and liberation drove the early Reformation.²¹² Thomas Tentler's *Sin and Confession on the Eve of the*

relied on the pastoralia and was careful to show that attritionism was lacking. Also, in contrast to more recent works, it presents an optimistic picture of increasing frequency and sophistication of confession.

²¹¹ Groupe de la Bussière, *Pratiques de la confession: des Pères du désert à Vatican II. Quinze études d'histoire: historique* (Paris, 1983), pp. 13–14, recognizes this and adds that religious history no longer had a place at [French] universities.

²¹² Steven Ozment, *Reformation in the Cities. The Appeal of Protestantism to Sixteenth-Century Germany and Switzerland* (New Haven, 1975). See also W. Werbeck, "Voraussetzungen und Wesen der scrupulositas im Spätmittelalter," *Zeitschrift für Theologie und Kirche* 68 (1971), 327–50. Ozment's position did not go unchallenged; see Lawrence Duggan, "Fear and Confession on the Eve of the Reformation," *Archive for Reformation History* 75 (1984), 153–75. On the continuing discussion of Ozment's thesis, see Ronald K. Rittgers, "Anxious Penitents and the Appeal of the Reformation: Ozment and the

Reformation reconfirmed some of Ozment's arguments but also made clear that late medieval confession was not a monolith. Penance was balanced between the Church's mission to dispense consoling forgiveness and its responsibility for social discipline.²¹³ Tentler's introduction of the latter term foreshadowed its importance for Reformation studies, although he placed the social disciplinary element in confession far earlier than later theories of confessionalization.

However, interest in the individual appropriation of the sacrament continued. Berndt Hamm's examination of the "Frömmigkeitstheologie" [theology of piety] of the Augustinian Johannes von Paltz (1445–1511) showed that Paltz shared the same concerns as his younger colleague Luther. Since Paltz found consolation in the objective reliability of the Church's sacramental forgiveness, Luther's inability or refusal to accept that solution remains the crux of the matter. But the significance of the indulgence controversy was also reaffirmed. Bernhard Felmborg's study of the great Thomist and early Luther opponent Cardinal Cajetan (Tommaso de Vio 1469–1534) made clear the vitality of late medieval scholastic theology and explored the development of Cajetan's immensely influential doctrine of indulgences in the scholastic—as opposed to polemical—arena of his clash with Luther.²¹⁴ Re-examining another classic Protestant topos—*omnis utriusque sexus*—Martin Ohst reaffirmed the legal innovativeness of the annual requirement to confess but also showed that it was the logical outcome of the scholastic revaluation of the sacrament, in particular the Church's concern to provide a *via securior* already in the High Middle Ages.²¹⁵

Mary Mansfield's study of public penance was a worthy successor, and corrective, to Karl Müller's explanation of the 12th-century

Historiography of Confession," in *Piety and Family in Early Modern Europe: Essays in Honour of Steven Ozment*, ed. Marc R. Forster and Benjamin J. Kaplan (Aldershot/Burlington, 2005), pp. 50–69. For a recent review of the early pamphlet literature, primarily Protestant, on the sacrament, see Ilse Tobias, *Die Beichte in den Flugschriften der frühen Reformationszeit* (Frankfurt, 2002).

²¹³ Thomas N. Tentler, *Sin and Confession on the Eve of the Reformation* (Princeton, 1970).

²¹⁴ Bernard Alfred R. Felmborg, *Die Ablasstheologie Kardinal Cajetans (1469–1534)* (Leiden, 1998). Wilhelm Ernst Winterhagen, "Ablasskritik als Indikator historischen Wandels vor 1517: Ein Beitrag zu Voraussetzung und Einordnung der Reformation," *Archiv für Reformationsgeschichte* 90 (1999), 6–71, establishes the sudden expansion of indulgences and growing disenchantment in Germany even before Luther.

²¹⁵ Martin Ohst, *Pflichtbeichte. Untersuchungen zum Busswesen im Hohen und Späten Mittelalter* (Tübingen, 1995).

revolution in the use and understanding of the sacrament. Mansfield combined a sceptical reading of the early scholastic theologians, a careful consideration of the liturgical manuscripts, and anecdotal evidence to subvert the traditional narrative of penance in the 12th and 13th centuries.²¹⁶ Reaching back to Morin, she argued that the three forms of confession—private, public, and solemn—were a construct of theologians to make sense of conflicting claims about public penance from different eras and regions.²¹⁷ She also argued, by reading the theologians against the grain, that private confession was rare before Lateran IV and that direct confession to God with contrition was the norm.²¹⁸ However, public penance remained the only “sacramental” form until well into the 13th century.²¹⁹ The attempt to impose a mandatory contrition-based private confession foundered on the difficulty of determining the sufficiency of an individual sinner’s contrition.²²⁰ Mansfield suggested that private confession was rescued by “legalizing” it and by putting priestly absolution at the centre of the rite.²²¹ However, she did not question the success of efforts to introduce private confession. Most strikingly, Mansfield showed that “public” penance continued throughout the period because it satisfied the community’s need to see egregious sinners humiliated. In this, she seems to provide support for John Bossy’s claim (see below) that medieval penance privileged social delicts over personal sin.

In general, the Protestant tradition presented Catholic penance as a powerful mix of discipline—both individual and social—with a clerically monopolized sacramental consolation. Ronald Rittgers has shown that, by contrast, Lutheran private confession privileged consolation and guarded the autonomy and privacy of the individual conscience.²²² These findings raise some important questions concerning penance, social discipline, and confessionalization. The confessionalization thesis (see below) posits that the early modern German states created obedient

²¹⁶ Mary C. Mansfield, *The Humiliation of Sinners. Public Penance in Thirteenth-Century France* (Ithaca, N.Y., 1995). Cf. Cyrille Vogel, “Les rites de la pénitence publique au X^e et XI^e siècle,” *Mélanges offerts à René Crozet à l’occasion de son soixante-dixième anniversaire par ses amis, ses collègues, ses élèves et les membres du C.É.S.C.M.*, ed. Pierre Gallais, Yves-Jean Riou, and René Crozet, 2 vols (Poitiers, 1966), 1:137–44.

²¹⁷ Mansfield, *Humiliation of Sinners*, p. 25.

²¹⁸ Mansfield, *Humiliation of Sinners*, pp. 37–38.

²¹⁹ Mansfield, *Humiliation of Sinners*, p. 33.

²²⁰ Mansfield, *Humiliation of Sinners*, pp. 39–41, 49.

²²¹ Mansfield, *Humiliation of Sinners*, pp. 50, 52, 59.

²²² Rittgers, *Reformation of the Keys*.

and orderly subjects in large measure through religious indoctrination and supervision, all as part of the larger process of modernization. Lacking both Catholic confessional and Reformed discipline, how did Lutheran states impose social discipline on their no less refractory subjects? A further question concerns the association of confessionalism and modernization. Traditionally, Reformation Lutheranism has enjoyed the reputation of progressiveness, in large measure because of the freedom of conscience that it fostered. However, if the success of Catholic confessionalism's social control has made it a harbinger of "modernity" for many scholars,²²³ two (at least) definitions of modernity are in play. One, based on Norbert Elias and Max Weber, emphasizes the role of social control in the creation of the self-disciplined subject necessary to the modern state and capitalism. The other appeals to individual liberty as the catalyst for the morally autonomous citizen.²²⁴ Clearly, secular ideology has joined theological doctrine as an influence guiding the analysis of confession and confessionalism. A measure of the changes in the study of sacramental penance is that Rittgers chose to address criticism more from the secular tradition than from the Catholic.

Turning to the Catholic interpretive tradition, it is surprising how small a role confession had traditionally played in discussions of Catholic confessionalism and the Counter-Reformation.²²⁵ The publication

²²³ Wolfgang Reinhard, "Gegenreformation als Modernisierung? Prolegomena zu einer Theorie des konfessionellen Zeitalters," *Archiv für Reformationsgeschichte* 68 (1977), 226–52.

²²⁴ Perhaps as a result, some American scholars have been more willing to ignore, criticize, or reject the confessionalization thesis, e.g., David Myers "Poor, Sinning Folk." *Confession and Conscience in Counter-Reformation Germany* (Ithaca, N.Y., 1996); and Marc Forster, *The Counter-Reformation in the Villages. Religion and Reform in the Bishopric of Speyer, 1560–1720* (Ithaca, N.Y., 1992).

²²⁵ H. Outram Evennett, *The Spirit of the Counter-Reformation. The Birkbeck Lectures in Ecclesiastical History given in the University of Cambridge in May 1951* ed. John Bossy (Cambridge, 1968); A. G. Dickens, *The Counter-Reformation* (New York, 1969); *Catholicism in Early Modern History: A Guide to Research*, ed. John W. O'Malley (St Louis, 1988); Frederick J. McGinniss, "The Counter Reformation in Italy," in *Reformation Europe: A Guide to Research II*, ed. William S. Maltby (St Louis, 1992); R. Po-chia Hsia, *Society and Religion in Münster, 1535–1618* (New Haven, 1984); John W. O'Malley, *Trent and All That. Renaming Catholicism in the Early Modern Era* (Cambridge, Mass., 2000). Even when dealing with the Jesuits, the topics of preaching, schools, and the Spiritual Exercises—not frequent confession—were central. Confession is also strangely absent from the literature on piety/Frömmigkeit: Ludwig Andreas Veit and Ludwig Lenhart, *Kirche und Volksfrömmigkeit im Zeitalter des Barock* (Freiburg, 1956); Dieter Breuer, ed., *Fröm-*

of Jean Delumeau's *Le catholicisme entre Luther et Voltaire* in 1971 was a watershed.²²⁶ Drawing upon the French religious sociologists, Delumeau challenged the notion of a "Christian" Middle Ages by arguing that medieval Catholics were more than half pagan. Instead, the Reformation and Counter-Reformation marked the true Christianization of Europe. Despite the boldness of this claim, Delumeau clung to a theologically normative notion of the "Christianity" into which Europe was Christianized. By contrast, John Bossy's celebrated article on "The Social History of Confession in the Age of the Reformation" simply posited two forms of Christianity. He maintained that early modern Roman Catholicism, for all of its continuity with medieval religion, constituted a new form of religiosity with no precedent in the tradition.²²⁷ Penance changed from a communal rite designed to maintain the peace of the community to a process in which the individual was reconciled with God in the depths of the soul. Whereas Delumeau credited the advances of early modern society, particularly education, for the success of the Church, Bossy suggested that religious change helped drive and direct the larger societal evolution toward modernity.

Scholars of the Counter-Reformation have generally accepted Bossy's portrayal of the medieval practice of confession as a communal event directed primarily at maintaining harmony in the community.²²⁸ David

migkeit in der frühen Neuzeit: Studien zur religiösen Literatur des 17. Jahrhunderts in Deutschland (Amsterdam, 1984); *Volksfrömmigkeit. Von der Antike bis zum 18. Jahrhundert*. ed. Hubert Ch. Ehalt (Vienna and Cologne, 1989).

²²⁶ Jean Delumeau, *Le Catholicisme entre Luther et Voltaire* (Paris, 1971). See also Jean Delumeau, *L'aveu et le pardon. Les difficultés de la confession, XIII^e–XVIII^e siècle* (Paris, 1990).

²²⁷ John Bossy, "The Social History of Confession in the Age of the Reformation," *Transactions of the Royal Historical Society* 25 (1975), 21–38. See also idem, "The Counter-Reformation and the People of Catholic Europe," *Past and Present* 47 (1970), 51–71; idem, "Moral Arithmetic: Seven Sins into Ten Commandments," in Edmund Leites, *Conscience and Casuistry in Early Modern Europe* (Cambridge, 1988), pp. 214–34; idem, *Christianity in the West, 1400–1700* (Oxford, 1985); idem, "Blood and Baptism: Kinship, Community and Christianity in Western Europe from the Fourteenth to the Seventeenth Centuries," in Derek Baker, *Sanctity and Secularity: The Church and the World*, Studies in Church History, 10 (Oxford, 1973), pp. 129–43; idem, "Essai de sociographie de la messe, 1200–1700," *Annales* 36 (1981), 44–70.

²²⁸ One can trace his influence: Philip T. Hoffman, *Church and Community in the Diocese of Lyon, 1500–1789* (New Haven, 1984); Louis Châtellier, *L'Europe des dévots* (Paris, 1987); Robin Briggs, *Communities of Belief: Cultural and Social Tension in Early Modern France* (Oxford, 1989); Philip M. Soergel, *Wondrous in His Saints. Counter-Reformation Propaganda in Bavaria* (Berkeley, 1993); Marc R. Foster, *Catholic Revival in the Age of the Baroque. Religious Identity in Southwest Germany, 1550–1750* (Cambridge, 2001). In an interesting

Myers has undertaken the most thorough evaluation of Bossy's thesis based on Bavarian sources.²²⁹ Myers established that late medieval penance was a communal event, lacking privacy, and conducted with dizzying speed.²³⁰ Annual confession is the norm, although the clergy urge the *bina confessio*, that is, one confession at the beginning of Lent and another in Holy Week. The new model of penance promoted by the Jesuits is, by contrast, frequent, individual, secret, and thorough.²³¹ The result is a penitential process that manages sin and produces a "well-groomed conscience."²³² Individual sins are isolated and systematically eliminated, while guilt is assuaged by the power of the keys. Although requiring an intense introspection, behaviour modification, not spiritual exaltation, is the goal of Jesuit confession. The "laxity" of the Jesuits allows them to school penitents rather than terrify them. The rising frequency of confession indicates that the Jesuits enjoy some success.²³³ Although Myers recognized the issue of social control through state enforcement of confession, he remained in the orbit of Ozment, Tentler, Bossy, and Delameau in dealing with penance primarily as a religious phenomenon. Of course, the inward appropriation of societal norms effected by frequent confession was a most effective instrument of social control.

The secular critique of confession as a tool of absolutism, an unwarranted invasion of individual privacy, and a spur to immorality has experienced a remarkable resurgence. The confessionalization thesis refurbishes the repressive interpretation. As elaborated by Wolfgang Reinhard and Heinz Schilling, often enriched by the theories of Norbert Elias and Michel Foucault, and especially when combined with Delumeau and Bossy, confessionalization offered a secular nexus between theology and practice, individual and social, psychology and sociology, as well as spirituality and discipline, all as part of a grand

counterpoint, Forster describes the successful resistance of rural communities to the new Jesuit ideal in his *Counter-Reformation in the Villages*.

²²⁹ W. David Myers, "Poor, Sinning Folk."

²³⁰ Myers, "Poor, Sinning Folk," pp. 33–60. Myers calculated that a priest in Freising would have had to allow only 2.4 minutes per confession if one allowed for a 12-hour shift (p. 96).

²³¹ On the introduction of the confessional, see Wilhelm Schlombs, *Die Entwicklung des Beichtstuhls in der katholischen Kirche: Grundlagen und Besonderheiten im alten Erzbistum Köln* (Düsseldorf, 1965).

²³² Myers, "Poor, Sinning Folk," p. 202.

²³³ Myers, "Poor, Sinning Folk," pp. 188–91.

theory of modernization.²³⁴ The thesis has found both international acceptance and criticism.

Italian scholars have been particularly taken with its applicability to the role that Tridentine Catholicism played in moulding the Italian character.²³⁵ Taking inspiration from French institutional and sociological approaches, Italian scholars have mined the archives of the Inquisition and episcopal administration (especially visitations).²³⁶ Resolutely secularist and often anticlerical, this scholarship described a fearsome repressive machinery. The étatist approach reduced the laity to objects of social control and limited popular participation to instinctive resistance.²³⁷ Wietse de Boer's study of Carlo Borromeo's (1538–84)

²³⁴ Winfried Schulze, "Gerhard Oestreichs Begriff 'Sozialdisziplinierung' in der frühen Neuzeit," *Zeitschrift für historische Forschung* 14 (1987), 265–302; Stefan Breuer, "Sozialdisziplinierung. Probleme und Problemverlagerungen eines Konzepts bei Max Weber, Gerhard Oestreich und Michel Foucault," in *Soziale Sicherheit und soziale Disziplinierung: Beiträge zu einer historischen Theorie der Sozialpolitik*, ed. Christoph Sachsse and Florian Tennstedt (Frankfurt am Main, 1986), pp. 45–69; Wolfgang Reinhard, "Pressures towards Confessionalization? Prolegomena to a Theory of the Confessional Age," in C. Scott Dixon, *The German Reformation: The Essential Readings* (Oxford, 1999), pp. 177–82; Heinz Schilling, "Die Konfessionalisierung im Reich. Religiöser und gesellschaftlicher Wandel in Deutschland zwischen 1555–1620," *Historische Zeitschrift* 246 (1988), 1–45; idem, *Kirchenzucht und Sozialdisziplinierung im frühneuzeitlichen Europa: mit einer Auswahlbibliographie*, ed. Heinz Schilling (Berlin, 1994). See also R. Po-Chia Hsia, *Social Discipline in the Reformation: Central Europe, 1550–175* (New York, 1989).

²³⁵ For an overview of the literature, see Wietse de Boer, "Social Discipline in Italy: Peregrinations of a Historical Paradigm," *Archiv für Reformationsgeschichte* 94 (2003), 294–307. On the relationship to modern Italian character, see Adriano Prosperi, "Premessa," in *Tribunali della coscienza: Inquisitori, confessori, missionari* (Turin, 1996), pp. 9–21. See also *Disciplina dell'anima, Disciplina del corpo e disciplina della società tra medioevo ed età moderna*, ed. Paolo Prodi and Carla Penuti (Bologna, 1994); Oscar Di Simplicio, "Premessa" and "Proiezioni," in *Peccato penitenza perdono, Siena 1575–1800: La formazione della coscienza nell'Italia moderna* (Milan, 1994), pp. 13–16, 398–402; Albano Biondi, "Aspetti della cultura cattolica post-tridentina. Religione e controllo social," in *Intelletuali e potere*, ed. Corrado Vivanti, *Storia de'Italia, Annali* 4 (Turin, 1981), pp. 253–302; and Giorgia Alessi, "Discipline. I nuovi orizzonti del disciplinamento sociale," *Storica* 2, no. 4 (1996), 7–37.

²³⁶ Andrea del Col and Giovanna Paolin eds., *L'Inquisizione romana in Italia nell'età moderna: archivi, problemi di metodo e nuove ricerche* (Rome, 1991); Cecilia Nubola and Angelo Turchini, eds., *Visite pastorali ed elaborazione dei dati: esperienze e metodi* (Bologna, 1993); Giovanni Romeo, *Ricerche su confessione dei peccati e inquisizione nell'Italia del Cinquecento* (Naples, 1997). For the role of the parish priest as the pivot, see Luciano Allegra, "Il parroco: un mediatore tra alta e bassa cultura," in *Intelletuali e potere*, ed. Vivante, pp. 895–947.

²³⁷ Prosperi, *Tribunali della coscienza*. Even works devoted to confession itself reflect this approach, e.g., Boris Ulianich, *Ricerche sulla confessione dei peccati a Napoli tra '500 e '600*, (Naples, 1997). Compare, however, Di Simplicio, *Peccato penitenza perdono*.

aggressive administration of the sacrament in the archdiocese of Milan builds upon that work.²³⁸ For de Boer, episcopal administration, rather than Jesuit missions, was the real story of Counter-Reformation penance. And intrusive social control rather than solicitous “grooming” of the soul was the purpose. Although Borromeo’s experiment eventually failed, rigourists elsewhere appealed to his example to discipline and civilize their flocks.²³⁹

The secular tradition’s fascination with sexuality, enriched by contemporary scholarship’s interest in gender, surfaces in Stephen Haliczer’s tale of the Spanish Inquisition’s struggle with priestly solicitation. He criticizes the unhealthy combination of secret confession and clerical celibacy in a more sophisticated and Freudian way than his 19th-century predecessors.²⁴⁰ Less fraught relationships of confessors with holy women have drawn other scholars.²⁴¹ In comparison, economic issues have not been prominent, although the *summae confessorum* remain useful for the Church’s prescriptive agenda.²⁴² But in general, the secular critique has pursued questions of power and social control.

Medieval penance did not experience a surge of interest equal to the early modern sacrament. But confession remained an important topic for medievalists of every period.²⁴³ The early 1970s saw some interest in the theology of the sacrament, its forensic character, and the role of canon law in its evolution.²⁴⁴ The changes underway in the post-

²³⁸ Wietse de Boer, *The Conquest of the Soul. Confession, Discipline, and Public Order in Counter-Reformation Milan* (Leiden, 2001).

²³⁹ See in this volume, Wietse de Boer, “At Heresy’s Door: Carlo Borromeo, Penance and Religious Boundaries in Early Modern Europe.”

²⁴⁰ Stephen Haliczer, *Sexuality in the Confessional. A Sacrament Profaned* (Oxford, 1996).

²⁴¹ See in this volume, Jodi Bilinkoff, “Confessors as Hagiographers in Early Modern Catholic Culture.” See also idem, “Confessors, Penitents, and the Construction of Identities in Early Modern Avila,” in *Culture and Identity in Early Modern Europe: Essays in Honor of Natalie Zemon Davis*, ed. Barbara Diefendorf and Carla Hesse (Ann Arbor, 1993), pp. 83–100.

²⁴² Odd Langholm, *The Merchant in the Confessional: Trade and Price in the Pre-Reformation Penitential Handbooks* (Leiden, 2003).

²⁴³ See also the discussion of Mansfield, Ohst, and other medievalists cited above.

²⁴⁴ Valens Heynck, “Der richterliche Charakter der Buss-sakramentes nach Johannes Duns Scotus,” *Franziskanische Studien* 47 (1965), 339–414; Nicholas Haring, “The Interaction between Canon Law and Sacramental Theology in the Twelfth Century,” *Proceedings of the Fourth International Congress of Medieval Law, Toronto, 21–25 Aug. 1972* (Vatican City, 1976), pp. 483–93; Winfried Trusen, “Forum internum und gelehrtes Recht im Spätmittelalter. Summae confessorum und Traktate als Wegbereiter der Rezeption,” *Zeitschrift für Rechtsgeschichte, Kanonische Abteilung* 57 (1971), 83–126.

Vatican II Church undercut continued interest in the subject, however. The real focus was on what we might term “outreach,” particularly with regard to the history of the period after Lateran IV. Editions and studies of *summae* and manuals continued to appear and helped integrate those sources into the larger picture of the medieval Church and its mission.²⁴⁵ Designed as aids to confessors rather than as purely academic exercises, such texts make clear the intent to transfer the new penance from the lecture halls to the parish.²⁴⁶ But they were only part of a larger movement that transformed the *cura animarum* into something more recognizable to modern observers.²⁴⁷ This process created “pastoral care” as we know it by making priests physicians of souls and by insisting on parochial preaching. Because preachers often sought to educate and motivate Christians to confess their sins, the relationship of preaching and confession was very close.²⁴⁸ Although parish

²⁴⁵ Joseph Goering has been especially important: Robert Grosseteste, *Templum Dei*, ed. Joseph Goering and F. A. C. Mantello (Toronto, 1984); Joseph Goering, “Notus in Iudea Deus: Robert Grosseteste’s Confessional Formula in Lambeth Palace MS 499,” *Viator* 18 (1987), 253–73; idem, *William de Montibus (c. 1140–1213): The Schools and the Literature of Pastoral Care* (Toronto, 1992).

²⁴⁶ The manuals came in a rich variety of forms suited to different audiences and needs; see Robert Rusconi, “‘Confessio generalis.’ Opuscoli per la pratica penitenziale nei primi cinquanta anni della introduzione della stampa in Italia,” in *I Frati Minori tra ’400 e ’500: atti del XII Convegno Internaz. Assisi, 18–19–20 ott. 1984* (Assisi, 1986), pp. 189–227; Jean Longère, “Quelques Summae de Poenitentia à la fin du XII^e et au début du XIII^e siècle,” in Congrès national des sociétés savantes, *La Piété populaire au Moyen Âge: actes du 99^e Congrès national des sociétés savantes, Besançon, 1974, tome 1* (Paris, 1977), pp. 45–58.

²⁴⁷ Roberto Rusconi, “Pratica culturale ed istruzione religiosa nelle confraternite italiane del tardo medio evo: ‘libri da compagnia’ e libri di pieta,” *Le mouvement confraternal au moyen âge. France, Italie, Suisse* (Geneva, 1987), pp. 133–53; Joseph Goering and Daniel S. Taylor, “The Summulae of Bishops Walter de Cantilupe (1240) and Peter Quinel (1287),” *Speculum* 67 (1992), 576–94; Jean Longère, “La penitence d’après quelques Statuts synodaux français du XIII^e siècle,” in *Horizons marins, itinéraires spirituels (V^e–VIII^e siècles)*, vol. 1, *Mentalités et sociétés*, ed. Henri Dubois, Jean-Claude Hocquet, and André Vauchez (Paris, 1987), pp. 183–99; idem, “Le prêtre de paroisse d’après les statuts synodaux du XIII^e siècle,” *Cahiers de Fanjeaux* 25 (1990), 287–326; idem, “La pénitence selon la *Repertorium*, les instructions et constitutions et le pontifical de Guillaume Durand,” in *Guillaume Durand, évêque de Mende (v. 1230–1296), canoniste, liturgiste et homme politique*, ed. Pierre-Marie Gy (Paris, 1992), pp. 105–33.

²⁴⁸ Roberto Rusconi, “De la predication à la confession: transmission et control de modèles de comportement au XIII^e siècle,” *Faire Croire. Modalités de la diffusion et de la réception des messages religieux du XII^e au XV^e siècle: table ronde organisée par l’École française de Rome, en collab. avec l’Institut d’histoire médiévale de l’Université de Padoue: (Rome, 22–23 juin 1979)* (Rome, 1981), pp. 67–85; Lester K. Little, “Les techniques de la confession et la confession comme technique,” *Faire Croire*, pp. 87–99; Jacques Berlioz, “‘Quand dire

priests remained ritual specialists, they were expected to “cathechize” a nominally Christian population. In both preaching and penance, however, the mendicant orders produced many of the manuals, provided often unwanted assistance, and entered into competition with the parish clergy for the offerings.²⁴⁹ Their confraternities, and others not associated with them, often required more frequent confession as part of a fully Christian life.

Conclusion

For most of the nine centuries discussed here, the historiography of penance has been part of the process that it studied. Historians “did” theology and theologians “did” history in an attempt establish the “true” form of the sacrament. In what might be called an historical “Heisenberg uncertainty principle,” the study of penance has changed the sacrament, producing a dialectical relationship between the descriptive and normative that has driven both historical research and theological speculation. The recent secularization of the field, however, breaks that cycle with unforeseeable consequences. What is clear, however, is that any “new history of penance” will no more escape the gravitational pull of ideology than its predecessors. Which is as it should be. Complete objectivity presupposes irrelevancy and produces mere antiquarianism. Nonetheless, the lowering of inter-confessional antipathies may allow scholars to escape a tunnel vision that has limited the scope and depth of both historical and theological considerations of sacramental penance.

Students of the late medieval sacrament face the critical question: to what extent did the sophisticated creation of the schools reach the mass of the population, or even of the clergy? It is clear that the Church invested a great deal in the effort to bring penance to the parish. The proliferation of manuals, both in manuscript and print, attests to both concerned authors and interested readers. However, what was the

c'est faire dire.' *Exempla et confession chez Étienne de Bourbon* (d. v. 1261),” *Faire Croire*, pp. 299–335.

²⁴⁹ Roberto Rusconi, “I francescani e la confessione nel secolo XIII,” *Francescanesimo e vita religiosa dei laici nel 2000. atti dell'VIII convegno internazionale, Assisi, 16–18 ottobre 1980* (Assisi, 1981), pp. 251–309.

distribution of those manuals? When one adds up all of the surviving manuscripts, for example, just how many clerics could have benefited from them? To be sure, what survives is not what once existed. But still, would it be possible to compare what was produced to what would have been needed for the task at hand? What about alternatives? Were there ways in which more learned and more experienced priests could instruct and advise with some regularity the less well-prepared?

But of course, the manuals and their contents could only have an impact when Christians went to confession. Are the indications that we have from the later Middle Ages accurate? Was it the case that for most of the laity, one annual confession sufficed? How many confessed two or three times a year? And how many made a regular practice of confessing their sins to a priest? If it is true that the mass of the population underwent confession once a year, but that a minority, and perhaps a substantial minority, visited the priest more frequently, does that perhaps suggest a growing cleavage among the faithful concerning the basic character of their religiosity? What did it mean to be Christian in the later Middle Ages? What would be the profile of the religious experience of the average churchgoer? Especially, when one considers that most Christians may only have received the Eucharist once a year as well. Most would have been present at the weekly Mass in which the sacrament of the altar was confected, but that is a far different experience than the actual reception of the element(s).

Questions concerning the nature and extent of late medieval penance reinforce other concerns about the sacrament in the 11th and 12th centuries. If one does not assume the modern, that is post-Reformation, form of the sacrament as the implicit norm, the development of the sacrament beginning in the late 11th century really needs explaining. It is by no means clear that the early medieval form of the sacrament would necessarily evolve into the high medieval scholastic enterprise. Given the seeming resistance or indifference of most Christians in later centuries, the new penance of 12th and 13th centuries did not seem to respond to demand on the part of the *populus dei*. The parish clergy also evinced no great interest or desire for the innovation. It was hard work, and may have been completely alien to their traditional religious frame of reference. Were there developments outside of the schools to which the Masters responded? Or is it possible that theologically the new penance was simply the product of systematic speculation by contending scholastics? That the more practically minded canon lawyers

were slow to jump on the bandwagon is suggestive, but no more than suggestive. We just know too little about the actual practice of the sacrament during the years in which Abelard and the Lombard were active. Looking further afield, are there comparable institutions or practices in other cultures involving confession and penance in a religious context? Or was the Catholic sacrament of penance *sui generis*?

The role of medieval penance in bringing about the Reformation remains unresolved, although if infrequent and superficial confession was typical of the later Middle Ages, consciences oppressed by the confessional would seem to be relatively rare. If we are to take Martin Luther as a model, however, we should look closely at the more consolatory form of penance and at the willing confessant rather than the reluctant. Did the emphasis on attrition and the power of clerical absolution prepare the way for acceptance of a "gracious God"?

The relationship of penance to confessionalization can only be addressed through further local studies. But already research has uncovered three distinct types of sacramental penance during the Counter Reformation. Borromeo in Milan was a model for those Catholic reformers who favoured a rigorous, contrition-based, penal form of the sacrament. The Jesuits of Bavaria, in contrast, promoted a kinder, gentler form of penance that was attrition-based, and they sought to form souls more than pay debts, either to God or to the community. But Marc Forster has discovered that peasant communities in southwest Germany who were concerned to maintain their Catholic identity successfully resisted innovation and maintained the traditional annual confession. Future research might profitably investigate where these three forms appear. Parallel to such research should be a detailed examination of the *pastoralia*, particularly manuals for confessors, in the 17th and 18th centuries, much as already been done for the later Middle Ages.

Besides expanding the chronological scope, more attention should be given to other parts of Europe besides Germany and Italy, for example France, Spain, and Eastern Europe, but also Holland and England. The adaptation of sacramental penance in officially Protestant nations should shed light on what at least some Catholics thought was fundamental to the sacrament. Beyond the confines of Christian Europe, the efforts of Catholic missionaries around the globe should be examined to see how successfully they implanted the sacrament of penance. Taking a cue from subaltern studies, it would be interesting to know whether

the conquered helped mould the institution both in the mission field and in the home country.

Although much of the motivation for studying penance has faded, the prospects for the study of the sacrament are in fact quite exciting...and daunting. The last decades have raised problems and questions of such a fundamental character that a truly “new” history of penance is in the making.

THE HISTORIOGRAPHY OF EARLY MEDIEVAL PENANCE

Rob Meens

The historiography of penance can be described in many different ways. In this essay I take as my point of departure the persistent medieval idea of the existence of a Roman penitential; I take this up to the beginning of the 20th century, when this myth was finally laid to rest. The method to demonstrate that this penitential was mythical in character was developed in 19th-century forms of textual criticism, which flourished mainly in Germany. This German tradition has proved to be a recurring feature of research into penitential texts to the present day. Many textual studies and important new editions bear the mark of this German tradition of scholarship. The most influential historical framework within which these texts have been interpreted was designed by Bernhard Poschmann in the period between the two World Wars, a framework that has only recently come under critical scrutiny.¹ Poschmann saw the decline of late antique public penance and the concomitant rise of private penance as the main development in this period, and this view has long dominated the field, thereby obscuring many other ways people could atone for their sins.² Lately, attention has moved to the variety of possible ways of doing penance to the point of blurring the boundaries between the religious and secular spheres. The secular ritual of submission known as *deditio* borrowed so many features from the ecclesiastical rites of penance that they are sometimes hard to tell apart. The famous humiliation of the emperor Henry IV before Pope Gregory VII at Canossa, for example, traditionally described as a ritual of public penance, has lately been regarded as such a ritual

¹ For the early Middle Ages, see in particular B. Poschmann, *Die abendländische Kirchenbusse im Ausgang des christlichen Altertums* (Munich, 1928); and idem, *Die abendländische Kirchenbusse im frühen Mittelalter* (Breslau, 1930) [hereafter *K.i.f.M.*].

² See the essays of Kevin Uhalde and Claudia Rapp in this volume; also R. Price, "Informal Penance in Early Medieval Christendom," in *Retribution, Repentance, and Reconciliation*, ed. K. Cooper, J. Gregory, Studies in Church History 40 (Woodbridge, Suffolk, 2004), 29–39.

of submission.³ The last topic that will be addressed in this essay is the contribution of penance to early medieval society at large. The rising interest in the history of mentalities and in cultural history since the 1980s has resulted in a growing interest in the role of confession and penance in early medieval culture. Confessing one's sins has, for example, been regarded as a major factor in the establishment of a sexual code of conduct. Also, the actual forms the process of confession and penance took are regarded by some scholars as indicators of the nature of early medieval religiosity and culture. The stress on exteriority, exemplified by the emphasis on forms of sinful behaviour without looking so much at their motivations and on the acts of penance instead of on feelings of remorse, has been regarded as an indicator of an archaic or archaizing civilization. As will become clear, however, the significance of penance and confession for early medieval culture and society is still a subject for debate.

The Myth of the Roman Penitential

Since the beginning of the 20th century, it has been well established that the practice of secret penance, with its concomitant handbooks for confessors, known as *libri paenitentiales* or penitentials, originated in the regions of Ireland, Wales, and Cornwall. Penitential handbooks are generally regarded as an indicator for the existence of the practice of secret penance, since this genre was created to assist confessors when hearing confession. Only very rarely do we find references to penitential practice in other sources, and for this reason penitential handbooks still provide the basic framework for a history of penance in the early Middle Ages. Hermann Joseph Schmitz, suffragan bishop of Cologne in the years 1893–99, was the last one who defended the thesis of the Roman origin of the practice of private confession, and he therefore advocated the existence of an original Roman penitential as the fountainhead from which all later works of this genre sprang. Actually, penitentials reached Rome as late as the 10th century, and the one text that might properly be called a Roman penitential, the so-called

³ For discussion about the interpretation of this event, see W. Goez, "Canossa als *deditio*?" in *Studien zur Geschichte des Mittelalters. Jürgen Petersohn zum 65. Geburtstag*, ed. M. Thumser (Stuttgart, 2000), pp. 92–99; and G. Althoff, *Die Macht der Rituale. Symbolik und Herrschaft im Mittelalter* (Darmstadt, 2003), p. 137, esp. n. 6.

Paenitentiale Vaticanum, dates from the 10th century.⁴ It is remarkable, though, that throughout the centuries, the myth of a Roman penitential has been so persistent.⁵

Already in the early 8th century, the penitential known as the *Excarpus Cummeani* referred to a Roman penitential, when it cites a sentence deriving in fact from the penitential of Theodore of Canterbury.⁶ It is questionable whether this attribution to a Roman penitential was meant to enhance the prestige of the sentence in question, as is generally taken for granted. If that were the case, one would expect more attributions to a Roman penitential in this text. Possibly, the allusion to Rome has more to do with the Roman background of the Greek monk Theodore, who spent perhaps as many as 20 years in Rome before being sent to Canterbury by Pope Vitalian in 668.⁷ In several instances, Theodore refers to his knowledge of Roman traditions when counselling in matters of penance and church discipline, and it may be this knowledge of Rome that led to the allusion to a Roman penitential in the *Excarpus Cummeani*. It has recently been argued, moreover, that the *Excarpus Cummeani* was composed in Corbie in the same milieu that revised the *Collectio Vetus Gallica*, a revision that turned this canon law collection into a highly influential one.⁸ It was also at Corbie that a version of

⁴ For this text, see L. Körntgen, "Ein italienisches Bußbuch und seine fränkische Quellen. Das anonyme Paenitentiale der Handschrift Vatikan, Arch. S. Pietro H 58," in *Aus Archiven und Bibliotheken. Festschrift für Raymund Kottje zum 65. Geburtstag*, ed. H. Mordek (Frankfurt am Main and Bern, etc., 1992), pp. 189–205; the name *Paenitentiale Vaticanum* was advanced by A. Gaastra, "Penance and the Law: The Penitential Canons of the Collection in Nine Books," *Early Medieval Europe* 14 (2006), 85–102, at p. 92. Pope Nicholas I might refer to a penitential handbook in his response to the Bulgars from the year 866 (epistola 99, c. 75), *Monumenta Germaniae Historica* [hereafter MGH] Epp. VI, p. 593.

⁵ R. Schieffer, "'Redeamus ad fontem.' Rom als Hort authentischer Überlieferung im frühen Mittelalter," in A. Angenendt and R. Schieffer, *Roma: Caput et fons* (Opladen, 1989), pp. 45–70, at pp. 63–64 discusses this phenomenon briefly.

⁶ *Excarpus Cummeani* VII, 11, ed. H. J. Schmitz, in *Die Bussbücher und das kanonische Bussverfahren*, vol. 2 of Schmitz, *Die Bussbücher und die Bussdisciplin der Kirche* (Düsseldorf, 1898; repr. Graz, 1958), p. 627.

⁷ M. Lapidge, "The Career of Archbishop Theodore," in idem, ed., *Archbishop Theodore. Commemorative Studies on his Life and Influence*, Cambridge Studies in Anglo-Saxon England 11 (Cambridge, 1995), pp. 1–29, at pp. 19–26.

⁸ L. Körntgen, "Der *Excarpus Cummeani*, ein Bussbuch aus Corbie?" in *Scientia veritatis. Festschrift für Hubert Mordek zum 65. Geburtstag*, ed. O. Münch and T. Zotz (Ostfildern, 2004), pp. 59–75; for the *Collectio Vetus Gallica*, see H. Mordek, *Kirchenrecht und Reform im Frankenreich. Die Collectio Vetus Gallica, die älteste systematische Kanonessammlung des fränkischen Gallien. Studien und Edition*, Beiträge zur Geschichte und Quellenkunde des Mittelalters, 1 (Berlin and New York, 1975).

Theodore's penitential was appended to the *Vetus Gallica*, which can be taken as a sign of the high regard in which the Corbie redactors held Theodore's work. One might wonder whether the Roman connection of Theodore himself, together with the strong Roman imprint on the archiepiscopal see of Canterbury, might not have had some influence on the choice made in Corbie to include Theodore's penitential among the additions to the *Collectio Vetus Gallica*.

It is only in the early 9th century that we hear again about a Roman penitential. At that time Ebo, archbishop of Reims, asked his suffragan bishop Halitgar of Cambrai to compose a penitential handbook for the use of confessors that would conform to "canonical traditions." After the severe condemnation of existing *libri paenitentiales* at the council of Chalon-sur-Saône in 813, where the bishops decided to "eliminate those booklets which are called 'penitentials,' and of which the errors are as certain as the authors are uncertain," Ebo felt it was necessary to compose a standard handbook for confessors; a handbook that would rely on established authorities in order to replace the existing texts.⁹ He approached Halitgar, who accompanied him in 823 when Ebo was active in missionary activities in the north.¹⁰ Fulfilling Ebo's commission, Halitgar used as his main sources for the first five books of this handbook the works of Gregory the Great and Julianus Pomerius, as well as two important canon law collections: the *Dionysio-Hadriana*, the canon law book that Charlemagne had acquired from Rome as the standard collection; as well as the important Carolingian collection that put so much emphasis on penance and confession, the *Collectio Dacheriana*.¹¹ For "simple priests," however, Halitgar foresaw problems in using just such a handbook, since it was much more complicated to handle and interpret canonical decrees than to follow the simple prescriptions offered by penitential handbooks, which were also more

⁹ Council of Chalon, c. 38: "repudiatis ac penitus eliminatis libellis, quos paenitentiales vocant, quorum sunt certi errores, incerti auctores," ed. MGH Conc. II, 1, 281.

¹⁰ R. Kottje, *Die Bussbücher Halitgars von Cambrai und des Hrabanus Maurus. Ihre Überlieferung und ihre Quellen*, Beiträge zur Geschichte und Quellenkunde des Mittelalters 8 (Berlin and New York, 1980), p. 4.

¹¹ See Kottje, *Bussbücher*, 173–90 and 253; for the importance of books from Rome, see Donald Bullough, "Roman Books and Carolingian renovatio," in *Renaissance and Renewal in Christian History*, ed. D. Baker, Studies in Church History 14 (Oxford, 1977), pp. 23–50; Schieffer, "Rom als Hort"; for the *Collectio Dacheriana*, see A. Firey, "Ghostly Recensions in Early Medieval Canon Law: The Problem of the *Collectio Dacheriana* and its Shades," *Tijdschrift voor Rechtsgeschiedenis* 68 (2000), 63–82.

tailored to actual situations they might encounter. For such priests, Halitgar added a sixth book, which not only resembled existing penitentials but also drew upon these as sources. In the preface to this book, Halitgar stressed, however, that it was not a book he had composed himself but one that he had taken from the Roman archive (*de scrinio Romane ecclesiae*).¹² It has been convincingly argued that Halitgar did not compose this so-called *Paenitentiale Pseudo-Romanum* himself.¹³ That he did really find this text in Rome seems hard to believe, since there is no trace of an early tradition of penitentials in the papal city prior to the late 9th or early 10th century. The text, moreover, has been shown to contain mainly sentences circulating in Gaul. Historians suppose, therefore, that Halitgar “invented” this Roman tradition, to enhance the authority of this text, which in other respects did not really differ from the existing penitentials.¹⁴

When Regino of Prüm composed his handbook for episcopal visitations in the early years of the 10th century, he was particularly concerned with the kind of penitential possessed by a parish priest. He queried whether the priest had a Roman penitential at his disposal, or one composed by bishop Theodore (of Canterbury) or the venerable Bede, because the priest had to interrogate the penitent and impose a penance according to these texts.¹⁵ It remains unclear which text Regino had in mind when writing about a Roman penitential, but since he made use of Halitgar’s penitential when composing his handbook, we may assume that he was thinking of the sixth book of this collection.¹⁶ Burchard of Worms adopted part of Regino’s words when compiling his

¹² Prologue of book six of the *Paenitentiale Halitgarii*, ed. Schmitz, *Die Bussbücher*, 2:266–300, at 290.

¹³ L. Körntgen, *Studien zu den Quellen der frühmittelalterlichen Bußbücher*, Quellen und Forschungen zum Recht im Mittelalter 7 (Sigmaringen, 1993), pp. 87–90 and 244–45.

¹⁴ C. Vogel, *Les “Libri Paenitentiales”*, Typologie des sources du moyen âge occidental, 27 (Turnhout, 1978), p. 81.

¹⁵ Regino of Prüm, *Libri duo de synodalibus causis et disciplinis ecclesiasticis*, Inquisitio 96: “Si habeat poenitentialem Romanum vel a Theodoro episcopo aut a venerabili Beda editum, ut secundum quod ibi scriptum est, aut interroget confitentem, aut confesso modum poenitentiae imponat?” ed. H. Wasserschleben, *Reginonis libri duo de synodalibus causis et disciplinis ecclesiasticis* (Leipzig, 1840), p. 26; Wasserschleben’s edition has now been reprinted with accompanying translation by Wilfried Hartmann, *Das Sendhandbuch des Regino von Prüm*. Ausgewählte Quellen zur deutschen Geschichte des Mittelalters 42 (Darmstadt, 2004); for this passage, see pp. 38–39.

¹⁶ For the sources used by Regino, see Kottje, *Bussbücher*, pp. 128–29; and R. Hagemmüller, “Zur Rezeption der Beda und Egbert zugeschriebenen Bußbücher,” in *Archiven und Bibliotheken*, ed. Mordek, pp. 149–59.

influential collection of canon law, the *Decretum*, but changed Regino's "Roman penitential" into "the penitential of the Roman pontiffs."¹⁷ Probably Burchard also had Halitgar's sixth book in mind when recommending this text, although he himself did not comply with this rule. It has been shown that Burchard used other texts besides these three penitentials recommended by Regino and himself.¹⁸

Through Regino's and Burchard's very influential texts, the idea of a Roman penitential must have found a wide audience, although it is difficult to imagine which texts might have been regarded as "Roman penitentials" by the readers of these collections. In the 1070s there seems to have circulated a "Roman penitential" in Rome itself, which possibly was Halitgar's sixth book, although this is by no means certain. This text was severely condemned by the cardinal priest Atto of St Mark's in Rome for being apocryphal. According to Atto, it was composed in an unlearned style, for uneducated priests who did not know the authentic canons. This reflects Halitgar's preface to his sixth book, where a similar idea is expressed. Yet for Atto, a staunch supporter of papal authority (in contrast to Halitgar), such a text was unacceptable, since it was in no way approved by the papacy. Atto gives two reasons why this text may have acquired the name "Roman." First, it might be that the author was from Rome; second, someone "titled that unlearned work with the authority of the Roman see." Atto certainly knew Burchard's work, with which he also had some problems, one of them being the foul language it uses.¹⁹

In the early modern period we again find references to a Roman penitential, but now the interest in such a text was more polemical and historical. The Council of Trent had heightened the interest in historical

¹⁷ *Decretum Burchardi* XVIII, 8: "Ad haec autem suum poenitentialem, qui et secundum canonum auctoritatem, et juxta sententias trium poenentialium, Theodori episcopi et Romanorum pontificum et Bedae ordinetur" (*Patrologiae cursus completus. Series Latina*, ed. J.-P. Migne [Paris, 1844–91] 140:979 D).

¹⁸ L. Körntgen, "Fortschreibung frühmittelalterlicher Bußpraxis. Burchards 'Liber corrector' und seine Quellen," in *Bischof Burchard von Worms 1000–1025*, ed. W. Hartmann (Mainz, 2000), pp. 199–226, at 211–13. Burchard may have had his own work in mind, which combined and harmonized sentences from these three works; see L. Körntgen, "Canon Law and the Practice of Penance: Burchard of Worms's Penitential," *Early Medieval Europe* 14 (2006), 103–17, at 116.

¹⁹ Preface of Atto of St Mark's to his *Breviarium*, ed. A. Mai, *Scriptorum veterum nova collectio e Vaticanis codicibus edita* 6.2 (Rome, 1832), pp. 60–61; I used the translation in R. Somerville and B. Brasington, *Prefaces to Canon Law Books in Latin Christianity. Selected Translations, 500–1245* (New Haven, 1998), pp. 118–21. Cf. Kottje, *Bussbücher*, p. 159 n. 32.

arguments, and penance was, of course, one of the items about which opinions differed. Archbishop Antonio Agustín of Tarragona, one of the reformers of the Council of Trent who also assisted the *Correctores Romani* in their revision of the corpus of canon law, published a “Poenitentiale Romanum” in 1582.²⁰ He clearly knew about Burchard’s reference to a Roman penitential but edited a text that he recognized as being from a much later date. He took this text from the library of Michael Thomasius, the archbishop of Lérida, who was one of the *Correctores Romani*, the commission instituted in 1566 by Pope Pius V to correct the corpus of canon law, the *Corpus Iuris Canonici*. Since the Roman penitential published by Agustín comprised decrees of Popes Gregory VII, Callixtus II, and Urban II and possibly used Gratian’s *Decretum*, it probably concerns a 12th-century text, as Agustín was fully aware. It had no title or indication of an author, and Agustín called it a Roman penitential only because the manuscript had apparently come from Rome at some point.²¹

In 1651, Jean Morin, an Oratorian monk who earned a reputation in the field of biblical criticism, published the first genuine historical study of penance, the product of many years of research. This study would be a landmark in the history of penance. In the appendix to this work, Morin published Halitgar’s *liber VI* as the *Poenitentiale Romanum*. He trusted Halitgar’s contention that he had taken this text from the Roman archive, and, because later authors such as Regino of Prüm and Burchard cited parts of it as deriving from the Roman penitential, he saw no reason to doubt Halitgar’s assertion. That later authors referred to citations not found in Halitgar as stemming from the Roman penitential could, in Morin’s view, be explained by the fact

²⁰ A. Agustín, *Canones paenitentiales quibus ordine succedunt* (Tarragona, 1582), pp. 10–65; cf. G. Hägele, *Das Poenitentiale Vallicellianum I. Ein oberitalienischer Zweig der frühmittelalterlichen kontinentalen Bußbücher. Überlieferung, Verbreitung und Quellen*, Quellen und Forschungen zum Recht im Mittelalter 3 (Sigmaringen, 1984), p. 13.

²¹ Agustín, *Canones paenitentiales*, prologue (without page numbers): “Paenitentiale Romanum a nobis editum multo posterior est Beda, et illo veteri Romano libro, quorum verba etiam refert. Namque hic Gregorii VII et Urbani et Callisti, et Innocentii Minoris verba scribuntur, qui multis annis fuerunt Beda posteriores. Sed et quaedam videntur ex Gratiani libro esse accepta ut postea dicemus. Hunc librum in Michaelis Thomasii Ilerdensis Episcopi bibliotheca inveni sine scriptoris, aut libri inscriptione, quem non inutilem esse iudicavi, et Romanum appellavi; quod ex ea urbe ad nostras manus venerit.”

that the penitential had been reworked in the period after Halitgar and that those authors cited later additions to this work.²²

The discussion of the existence of a Roman penitential was set on a new footing by Friedrich Wilhelm Hermann Wasserschleben, professor of law in Giessen and later in Halle, whose work, published around the middle of the 19th century, laid the foundation of the modern scholarly investigation of the penitential literature of the early Middle Ages. At first Wasserschleben was of the opinion that *Roman* was a linguistic term, denoting Latin versions of the penitentials of Theodore of Canterbury or Bede in contrast to vernacular ones. This would explain the fact that sentences from the works of these authors were designated as taken from a Roman penitential.²³ Wasserschleben's assumption that "Roman" referred to a linguistic phenomenon and not to Rome as the centre of the Church was questioned by Karl Hildenbrand, who argued that the designation was created because compilers of texts were convinced that the variety of Latin penitential texts was inspired by a Roman tradition, comparable to the variety of liturgical traditions ultimately stemming from a Roman origin.²⁴ Hildenbrand's views led Wasserschleben to revise his opinions. In his major work on early medieval penitentials, Wasserschleben then came to the conclusion that "Roman" must refer to generally accepted penitential rules in contrast to those applicable only in specific regional churches; the term *Roman* referring not to the papal city but to attitudes and views that were accepted and used in most Christian regions in the West.²⁵

While Hildenbrand and Wasserschleben had been moving away from the view that the Roman penitential was a single text composed in Rome, Hermann Joseph Schmitz, who was suffragan bishop in Cologne in the years 1893–99, returned to the older view.²⁶ He was convinced that he had identified the Roman penitential to which all

²² Jean Morin, *Commentarius historicus de disciplina in administratione sacramenti poenitentiae tredecim primis seculis in ecclesia occidentali, et huc usque in orientali observata, in decem libros distinctos* (Paris, 1651); I used the 2nd ed.: Antwerp, 1682, appendix, p. 5. On Morin, see in this volume the essay by R. Emmet McLaughlin.

²³ F. W. H. Wasserschleben, *Beiträge zu den vorgratianischen Kirchenrechtsquellen* (Leipzig, 1839), pp. 78–79.

²⁴ K. Hildenbrand, *Untersuchungen über die germanischen Pönitentialbücher* (Würzburg, 1851), p. 75; idem, review of F. Kunstmann, *Die lateinischen Pönitentialbücher der Angelsachsen, Kritische Jahrbücher für deutsche Rechtswissenschaft* 17 (1845), 515.

²⁵ H. Wasserschleben, *Die Bussordnungen der abendländischen Kirche* (Halle, 1851), p. 75.

²⁶ For biographical information, see *Allgemeine Deutsche Biographie*, vol. 54 (Leipzig, 1908), pp. 128–30.

our texts referred: the *Paenitentiale Vallicellianum I*, a text that Schmitz had found in a manuscript from the Biblioteca Vallicelliana in Rome and that could also be shown to have been written in the papal city itself, in the church of San Lorenzo in Damaso.²⁷ This text based its canons on proper Church law since it identified many of them as taken from late antique councils, and thereby established a direct connection between the ancient forms of penance as formulated in the canons of Nicea or Ancyra and the medieval penitential tradition. According to Schmitz, the Frankish penitential tradition, the basis of later medieval practice, went back to this authoritative Roman tradition and not to independent traditions from Ireland or the Anglo-Saxon world, as Wasserschleben had stated. Schmitz propounded his views in two monumental books, which contained a wealth of new material from manuscript sources. As such they are still indispensable for modern scholarship, although Schmitz's views on the relationship between the texts have since then been refuted. The work of Schmitz was immediately criticized by Wasserschleben, but it was the French historian of canon law, Paul Fournier, who in the early years of the 20th century showed in a very detailed way that the *Paenitentiale Vallicellianum* was not the source of the Frankish penitential tradition but, rather, a continuation thereof and that this held true for the whole group of texts that Schmitz had identified as "Roman."²⁸ Schmitz's attempt to defend the Roman character of the medieval penitential tradition was motivated by an urge to legitimize the existing Catholic practice of auricular confession. An emphasis on age, continuity and "Romanness" served to enhance the authority of medieval penitentials, which were regarded as a link between ancient Christian practices and 19th-century ones. In this perspective, Schmitz's inclinations were similar to the conviction that was probably at the heart of early medieval designations of particular penitentials as coming from Rome. They were meant to increase the authority of particular texts and thus to legitimize ways of hearing confession. Yet, early medieval claims were not as strong as the one made by Schmitz, because they did not need to defend the practice of penance as such. In a way, Schmitz returned to a medieval view of things, since earlier

²⁷ Schmitz called the penitential *P. Vallicellianum I*; Hägele renamed it to *P. Vallicellianum I*. For a description of this MS, see Hägele, *Das Paenitentiale Vallicellianum*, p. 27.

²⁸ Wasserschleben's critique is in *Theologische Literaturzeitung* 8 (1883), 614–17; P. Fournier, "Études sur les pénitentiels," *Revue d'histoire et de littérature religieuses* 6 (1901), 289–317; 7 (1902), 59–70, 121–27; 8 (1903), 528–53; and 9 (1904), 97–103 (repr. in P. Fournier, *Mélanges de droit canonique*, ed. T. Kölzer [Aalen, 1983], vol. 2).

Catholic authors such as Augustin or Morin had not regarded the fact that the medieval penitential tradition did not originate from Rome as problematic.

“Die Sorge um den rechten Text”

Morin must be regarded as the founder of a modern historical approach to medieval penance. He not only regarded his material with a genuine historical interest that was untainted by confessional prejudice but also published a great many sources. Wasserschleben and Schmitz, standing in the German 19th-century tradition of editing texts, continued in this tradition and their investigation of manuscripts and texts laid the foundation for a proper historical investigation of early medieval penance. Their editions of the bulk of early medieval penitential handbooks were made on the basis of a sound investigation of the manuscript tradition. They succeeded generally in establishing the relationships between the texts and so were able to date most of them quite accurately; we still have to rely on many editions published by these two German scholars. The volume dedicated to penitential handbooks, which appeared in the series *Typologie des Sources*, appropriately divided its bibliography into two periods: the period before Wasserschleben and the period thereafter.²⁹ The investigation of manuscript affiliations, the establishment of relations between texts, and the preparation of new editions has remained an almost exclusively German prerogative.

Shortly after the fundamental editions published by Wasserschleben and Schmitz, Otto Seebass published an anonymous penitential from a manuscript preserved in the Biblioteca Ambrosiana in Milan, which, according to him, belonged to the ancient Irish group of penitential handbooks, although he did not want to exclude the possibility that the text had been reworked in the 9th century.³⁰ Seebass was unable to work out the exact relation of this text with the genuine penitential of the Irish abbot Cummean because that text was only discovered a few years later by Joseph Zettinger.³¹ Subsequent research has shown that

²⁹ Vogel, *Les “Libri Paenitentiales”*, pp. 17–27.

³⁰ O. Seebass, “Ein bisher noch nicht veröffentlichtes Poenitential einer Bobbienser Handschrift der Ambrosiana,” *Deutsche Zeitschrift für Kirchenrecht* 6 (1896/97), 24–50.

³¹ J. Zettinger, “Das Poenitential Cummean,” *Archiv für katholisches Kirchenrecht* 82 (1902), 661–91.

Seebass was right in arguing for a very ancient core of this text having close relations with the oldest Irish penitential texts.³² In the 1920s, Paul Willem Finsterwalder tackled the complicated textual history of the texts related to Archbishop Theodore of Canterbury. Although his edition was severely criticized by Wilhelm Levison and Gabriel Le Bras, it still remains the best entry into the different textual traditions.³³ Further work on Theodore's texts has only recently been undertaken.³⁴

While the Latin texts have mainly been studied and edited by historians of canon law or general historians, the three penitential handbooks composed in the Old English language have been studied almost exclusively by literary historians, again scholars mainly from a German background.³⁵ Their primary interest was philological, as they concentrated on the language in which these texts were written. They have been analysed in their historical context only in the late 20th century, by Allen Frantzen, who combined a literary interests with a historical approach.³⁶

The Irish penitentials were well served in 1963 when Ludwig Bieler, who had fled Germany for Ireland, published his edition of the complete corpus of Irish penitentials, with the surprising exception of Seebass's discovery in the Biblioteca Ambrosiana. Bieler's edition set the standard for modern editions of these texts. His work provides carefully prepared editions with an extensive apparatus, an accompanying translation, and elaborate indices, which, however, should be used with care in some

³² Körntgen, *Studien zu den Quellen der frühmittelalterlichen Bußbücher*, pp. 7–86.

³³ P. W. Finsterwalder, *Die Canones Theodori Cantuariensis und ihre Überlieferungsformen*, Untersuchungen zu den Bußbüchern des 7., 8. und 9. Jahrhunderts, 1 (Weimar, 1929); see the critiques by W. Levison, "Zu den Canones Theodori Cantuariensis," *ZRG Kan. Abt.*, 19 (1930), 699–707 (repr. in W. Levison, *Aus rheinischer und fränkischer Frühzeit* [Düsseldorf, 1948], pp. 295–303); and G. Le Bras, "Notes pour servir à l'histoire des collections canoniques, V: Iudicia Theodori," in *Revue historique de droit français et étranger*, IV^e série, 10 (1931), 95–115.

³⁴ F. Asbach, *Das Poenitential Remense und der sogen. Excarpus Cummeani: Überlieferung, Quellen und Entwicklung zweier kontinentaler Bußbücher aus der 1. Hälfte des 8. Jahrhunderts* (Regensburg, 1975), Anhang, pp. 79–89; T. Charles-Edwards, "The Penitential of Theodore and the Iudicia Theodori," in *Archbishop Theodore*, ed. Lapidge, pp. 141–74; and Roy Flechner, "The Making of the Canons of Theodore," *Peritia* 17–18 (2003–04), 121–43.

³⁵ R. Spindler, *Das altenglische Bussbuch (sog. Confessionale Pseudo-Egberti)* (Leipzig, 1934); J. Raith, *Die altenglische Version des Halitgar'schen Bussbuches (sog. Poenitential Pseudo-Egberti)* (Hamburg, 1933; repr. Darmstadt, 1964); R. Fowler, "A Late Old English Handbook for the Use of a Confessor," *Anglia* 83 (1965), 1–34.

³⁶ See his synthesis in A. Frantzen, *The Literature of Penance in Anglo-Saxon England* (New Brunswick, 1983).

cases.³⁷ Daniel Binchy enriched Bieler's edition of the Latin texts with translations of the penitential in Old Irish and the Old Irish table of commutations.³⁸ Bieler's work inspired Raymund Kottje, who combined an interest in the history of Ireland with that in penitential literature on the Continent.³⁹ In 1977, Kottje announced a research project designed to produce a reliable edition of all the existing early medieval penitentials from the European mainland.⁴⁰ This project has since then resulted in a number of dissertations written by Franz Bernd Asbach, Franz Kerff, Günther Hägele, and Reinhold Haggenmüller, treating important penitential texts from the 8th and 9th centuries, such as the *Excarpsus Cummeani*, the *Quadripartitus*, the *Paenitentiale Vallicellianum I* and the penitentials attributed to Bede and Egbert.⁴¹ Ludger Körntgen's rich study of some particular texts and their sources also sprang from this research project, while the work of Francis Bezler and myself originated in close cooperation with this enterprise.⁴² These investigations unravelling the complex manuscript traditions and textual affiliations of penitential handbooks have unearthed many unknown manuscripts of well-known texts. Moreover, it has been possible to establish relations between texts and thereby to provide a better basis to date and to

³⁷ *The Irish Penitentials*, ed. L. Bieler, with an appendix by D. A. Binchy, *Scriptores Latini Hiberniae* 5 (Dublin, 1963); for corrections to his edition of Finnian's penitential, see R. Meens, "The Penitential of Finnian and the Textual Witness of the *Paenitentiale Vindobonense* B," *Mediaeval Studies* 55 (1993), 243–55. Bieler's indices are sometimes also in need of correction. All references to Finnian's penitential in the index for the *Paenitentiale Cummeani* are questionable.

³⁸ Bieler, *Irish Penitentials*, pp. 258–83.

³⁹ See his doctoral thesis (diss. Bonn, 1964): R. Kottje, *Studien zum Einfluss des Alten Testaments auf Recht und Liturgie des früheren Mittelalters (6.–8. Jahrhundert)*, Bonner Historische Forschungen 23 (Bonn, 1970); and his *Habilitationsschrift*, cited in full in n. 10 above.

⁴⁰ R. Kottje, "Die frühmittelalterlichen kontinentalen Bußbücher: Bericht über ein Forschungsvorhaben an der Universität Augsburg," *Bulletin of Medieval Canon Law*, n.s. 7 (1977), 108–11; idem, "Erfassung und Untersuchung der frühmittelalterlichen kontinentalen Bussbücher. Probleme, Ergebnisse, Aufgaben eines Forschungsprojektes an der Universität Bonn," *Studi Medievali* 26 (1985), 941–50.

⁴¹ F. B. Asbach, *Das Poenitentiale Remense*; F. Kerff, *Der Quadripartitus. Ein Handbuch der karolingischen Kirchenreform. Überlieferung, Quellen und Rezeption*, Quellen und Forschungen zum Recht im Mittelalter 1 (Sigmaringen, 1982); G. Hägele, *Das Paenitentiale Vallicellianum*; R. Haggenmüller, *Die Überlieferung der Beda und Egbert zugeschriebenen Bußbücher* (Frankfurt am Main and Bern, etc., 1991); F. Kerff, "Das Paenitentiale Pseudo-Gregorii. Eine kritische Edition," in *Archiven und Bibliotheken*, ed. Mordek, pp. 161–88.

⁴² F. Bezler, *Les pénitentiels espagnols. Contribution à l'étude de la civilisation de l'Espagne chrétienne du haut Moyen Âge* (Münster, 1994); Rob Meens, *Het tripartite boeteboek. Overlevering en betekenis van vroegmiddeleeuwse biechtvoorschriften (met editie en vertaling van vier tripartita)* (Hilversum, 1994).

localize them. In the process, many texts have been discovered, which Wasserscheleben and Schmitz had not been able to find.⁴³ The project has in the meantime resulted in two volumes containing new editions.⁴⁴ A lot of work, however, still remains to be done to replace the editions prepared by Wasserscheleben and Schmitz.

Private Penance: Continuities and Discontinuities

The texts edited by Wasserscheleben and Schmitz formed the basis for further historical research, which still bore the marks of confessional politics. Particularly in the 1930s, interest in early medieval penance flourished in Germany, France, and the USA. The studies of Wasserscheleben and Fournier had shown that penitential handbooks did not come from Rome but were a product of the churches of Ireland, Wales, and Cornwall, where in the 6th century monks and monasticism played a central role in the Church at large.⁴⁵ From the monastic experience where monks confessed their inner secrets to a senior in order to get to know their shortcomings and achievements on their way to perfection, a penitential practice was developed for the laity as

⁴³ See, e.g., L. Körntgen, *Studien zu den Quellen der frühmittelalterlichen Bußbücher*, presenting the *Paenitentiale in duobus libris* and the *Paenitentiale Oxoniense II*. For the latter text, see R. Meens, "Willibrords boeteboek?" *Tijdschrift voor Geschiedenis* 106 (1993), 163–78; and idem, "Christentum und Heidentum aus der Sicht Willibrords? Überlegungen zum *Paenitentiale Oxoniense II*" in M. Polfer, ed., *L'évangélisation des régions entre Meuse et Moselle et la fondation de l'abbaye d'Echternach (V^e–IX^e siècle)*, Publications de CLUDEM, t.16 (Luxemburg, 2000), pp. 415–28. Other "new texts": Körntgen, "Ein italienisches Bußbuch und seine fränkische Quellen," pp. 189–205; and R. Meens, "'Aliud benitenciale': The ninth-century *Paenitentiale Vindobonense C*," *Mediaeval Studies* 66 (2004), 1–26.

⁴⁴ R. Kottje, ed., *Paenitentialia minora Franciae et Italiae saeculi VIII–IX*, Corpus Christianorum, Series Latina [hereafter CCSL] 156 (Turnhout, 1994); and F. Bezler, ed., *Paenitentialia Hispaniae*, CCSL 156A (Turnhout, 1998).

⁴⁵ For the debate about whether we are dealing with a transition from an Irish Church originally organized episcopally to one dominated by monastic institutions, or with a church organization in which both models of authority co-existed, see R. Sharpe, "Some Problems Concerning the Organization of the Church in Early Medieval Ireland," *Peritia* 3 (1984), 230–70; and Colmán Etchingham, *Church Organisation in Ireland A.D. 650–1000* (Maynooth, 1999); both are in favour of a new model in which episcopal and monastic authority are combined. The argument for a change in form is defended by D. Ó. Cróinín, *Early Medieval Ireland 400–1200* (London and New York, 1995), pp. 149–52; and T. Charles-Edwards, *Early Christian Ireland* (Cambridge, 2000), pp. 241–81.

well.⁴⁶ Historians of penance oppose this penitential system generally to its late antique counterpart, public penance. As such, it is often simply called private penance and is regarded as a forerunner of high and late medieval forms of private penance and, therefore, of modern notions of private confession. Yet the distinction between public penance and secret forms of penitence was formulated only in the beginning of the 9th century, when bishops were worried about the proper ways of doing penance and advocated the use of the ancient penitential rites as they found them in canon law and liturgical texts. They spoke not of private penance but of secret penance.⁴⁷

One of the most influential works on penance was written by Henry Charles Lea, who as a self-made scholar combined a career in publishing with the study of history.⁴⁸ In 1896 he published his monumental *History of Auricular Confession and Indulgences in the Latin Church* in two volumes. In this book Lea stressed the discontinuities in the history of penance and criticized the usurpation of the power of the keys, that is, the power to absolve sins, by “the priestly class.” His criticism of clerical abuses, a theme he had already explored when writing on the Inquisition, is clearly inspired by a liberal view of history, although Lea explicitly stressed his attempt to write an objective history of auricular confession. For that reason he chose to omit the use of any Protestant authors when writing about confession.⁴⁹ After the critical attitude of the liberal historian Henry Charles Lea, Catholic historians reacted in studies that further shaped scholarship on early medieval penitential practices. In 1920 Oscar D. Watkins published a wide-ranging study of penance from the earliest Christian times to 1215, in which he described the varieties and new directions in the history of penance but stressed that all change had been directed by bishops and priests who were

⁴⁶ For the laity benefiting from pastoral care in Ireland, see Etchingham, *Church Organisation in Ireland*; and Charles-Edwards, *Early Christian Ireland*, pp. 118–19.

⁴⁷ M. de Jong, “What was ‘Public’ about Public Penance? *Paenitentia publica* and justice in the Carolingian world,” in *La Giustizia nell’alto medioevo II (secoli IX–XI)*, Settimane di Studio del centro Italiano di studi sull’alto medioevo 44 (Spoleto, 1997), pp. 864–65.

⁴⁸ For his career, see the brief sketch in J. Tollebeek, *Writing the Inquisition in Europe and America. The correspondence between Henry Charles Lea and Paul Fredericq (1888–1908)* (Brussels, 2004), pp. xviii–cxxvi. See also the essay by R. Emmet McLaughlin in this volume.

⁴⁹ H. C. Lea, *A History of Auricular Confession and Indulgences in the Latin Church*, 2 vols. (Philadelphia, 1896); idem, *A History of the Inquisition of the Middle Ages*, 3 vols (London, 1888).

inspired by the Holy Spirit.⁵⁰ Although Watkins's book was extremely useful in that it included large sections of the relevant sources, it was quickly superseded by the works of the Catholic German theologian Bernhard Poschmann (1878–1955). Poschmann wrote extensively on the subject of penance and published a study of penance in Late Antiquity in 1928, to be followed two years later by a monograph devoted to the development of penance in the early Middle Ages.⁵¹ In these works he analysed the development of penance in a detailed way, always stressing the high degree of continuity with ancient practices. He therefore belittled the influence of monastic forms of confession and penance on the system of "private penance."⁵² Elements such as contrition, confession of sins, and the exclusion from the Church as part of the satisfaction were all to be regarded as demonstrating continuity with the ancient practice of penance.⁵³ Public penance was on a decline from the 5th century onwards, to be artificially revived in the Carolingian period and then, in the 12th and 13th centuries, transformed into the solemn form of penance (*paenitentia sollemnis*).⁵⁴ The future, however, lay clearly with private penance. Poschmann saw real progress in the stress that was now being put on the confession of sins, although he concedes that in the early Middle Ages, satisfaction, the work of penance, was still the most important element in the forgiveness of sin.⁵⁵ The emphasis on the works of penance, which was evident in penitential handbooks with their extensive lists of sins and penances, brought the danger with it that external acts were held to be more important than inner contrition. All in all, however, he perceived penitential practice

⁵⁰ Oscar D. Watkins, *A History of Penance. Being a Study of the Authorities*, 2 vols. (London, 1929; repr. New York, 1961).

⁵¹ Poschmann, *Die abendländische Kirchenbusse im Ausgang des christlichen Altertums*; idem, *K.i.f.M.*

⁵² Poschmann, *K.i.f.M.*, esp. p. 30: "Also nicht aus der Mönchsbeichte, sondern aus der alten Kirchenbuße ist das keltische Bußsystem leztzin herausgewachsen. Das Vorbild der Mönchsbeichte hat es nicht neu geschaffen, sondern nur auf seine Ausgestaltung bestimmend eingewirkt."

⁵³ Poschmann, *K.i.f.M.*, pp. 24–30.

⁵⁴ Poschmann, *K.i.f.M.*, pp. 133–66.

⁵⁵ Poschmann, *K.i.f.M.*, p. 187: "Wir haben festgestellt, daß die Beicht in unserer Periode im Vergleich zu früher viel mehr im Vordergrund steht, weil sie bei der jetzt überwiegende Privatbuße schlechthin die konkrete Leistung darstellt, die der Sünder vor der Kirche zu erfüllen hat. Damit ist aber keineswegs gesagt, daß sie nun auch grundsätzlich als der wichtigste Faktor bei der kirchlichen Sündenvergebung angesehen wurde. Als solcher galt viel mehr nach wie vor die Genugtuung oder die Buße im engeren Sinne."

to be of the utmost importance in the Church's effort to educate the "primitive and passionate peoples" of the early Middle Ages.⁵⁶

Poschmann had concentrated on the history of penance on the basis of historical sources such as conciliar decrees, saints' lives, penitential handbooks, and sermons. Shortly after the publication of his two groundbreaking works, Josef Andreas Jungmann published a fundamental study of penitential liturgy in the early Middle Ages.⁵⁷ Because Jungmann's study had to rely on inadequate editions and because many of the manuscripts he used have since been re-dated, a study superseding his is still a desideratum.⁵⁸ Like Poschmann, Jungmann stressed continuities. He saw forms of private penance that were often of a sacramental character already in late antiquity, although people at the time did not yet recognize this.⁵⁹ Elements of the liturgy for public penitents, such as the imposition of hands on Ash Wednesday or the general absolution on Maundy Thursday, were adopted in liturgical practices meant for the whole community of believers. The fact that ordinary Christians gained access to the grace that was originally reserved for public penitents was, according to Jungmann, the result of the penitential zeal of ordinary believers and the pastoral solicitude of ecclesiastical authorities.⁶⁰

An interest in penance was developed not only in the field of religious history or liturgical studies but also in the field of the history of canon law. As we have seen, Paul Fournier, at that moment in France the doyen of history of canon law, was also the leading figure in the field of penitential texts because of his careful studies refuting Schmitz's

⁵⁶ Poschmann, *K.i.f.M.*, p. 236: "Alles in allem dürfen wir sagen, daß unter den Mitteln, mit denen die frühmittelalterliche Kirche ihr erstaunlich fruchtbares Erziehungswerk an den naturwüchsigen, von wilden Leidenschaften bewegten Völkern durchgeführt hat, ihr Bußinstitut an erster Stelle steht."

⁵⁷ J. A. Jungmann, *Die lateinischen Bussriten in ihrer geschichtlichen Entwicklung* (Innsbruck, 1932).

⁵⁸ Recently Sarah Hamilton, in her book *The Practice of Penance 900–1050* (Woodbridge and Rochester, 2001), has focussed on the liturgy of penance in the 10th and 11th centuries.

⁵⁹ Jungmann, *Die lateinischen Bussriten*, p. 313: "in allen diesen Fragen dürfen wir in jenen Zeiten gewiß nicht die Klarheit und Sicherheit heutiger Moraltheologie erwarten. Aber gerade weil zur sakramentalen Bedeutung des Bußritus, an dem sich die Bußbedürftigen ohnehin mit dem ganzen Volk beteiligten, nur noch die Absicht des Liturgen notwendig war, wird der Seelsorgewille des letzteren oft genug auch dort das Sakrament haben zustandekommen lassen, wo aus Unkenntnis einzelne positiv gegebene Verpflichtungen, etwas hinsichtlich der Vollständigkeit des Bekenntnisses, unerfüllt blieben."

⁶⁰ Jungmann, *Die lateinischen Bussriten*, p. 313.

thesis of a Roman penitential. Together with his student Gabriel Le Bras, he included penitential material in their study of canon law collections of the early Middle Ages. Le Bras then wrote an important article for the *Dictionnaire de Théologie Catholique*, in which he proposed a new classification of penitential texts.⁶¹ Le Bras's classification would in turn form the basis of the still-prevailing classification proposed by his pupil Cyrille Vogel, which he set forth in his fascicule for the series *Typologie des Sources*.⁶²

The Decline and Revival of Public Penance

According to historians such as Poschmann, who wanted to stress the continuities of private penance, public penance as it had been formulated in Late Antiquity was on the decline already in the 5th and 6th centuries. Cyrille Vogel documented this process from Gaulish sources.⁶³ In the meantime, however, the neat distinction between public and private penance has been challenged. Mary Mansfield set the tone by questioning the validity of this dichotomy for the later medieval period.⁶⁴ The "grand narrative" of the decline of public penance has most forcefully been rejected by Mayke de Jong. She not only argued for the existence of several less formal ways of doing penance in the early Middle Ages but also saw the rituals of public penance as a kind of invention of tradition taking place in the early 9th century.⁶⁵ Subsequent research by Sarah Hamilton has moved in the same direction. She has shown for the 10th and 11th centuries that liturgical books reveal that public penance existed in many different shapes, existing

⁶¹ P. Fournier and G. Le Bras, *Histoire des collections canoniques en occident*, 2 vols (Paris, 1931); G. Le Bras, "Pénitentiels" in *Dictionnaire de Théologie Catholique* 12 (1933), cols 1160–69.

⁶² Vogel, *Les "Libri Paenitentiales"*.

⁶³ C. Vogel, *La discipline pénitentielle en Gaule des origines à la fin du VII^e siècle* (Paris, 1952).

⁶⁴ M. Mansfield, *The Humiliation of Sinners. Public Penance in Thirteenth-Century France* (Ithaca and London, 1995).

⁶⁵ De Jong, "What was 'Public' about Public Penance?" pp. 863–904; eadem, "Pollution, Penance and Sanctity: Ekkehard's Life of Iso of St. Gall," in *The Community, the Family, and the Saint: Patterns of Power in Early Medieval Europe*, ed. J. Hill and M. Swan (Turnhout, 1998), pp. 145–158; M. de Jong, "Transformations of Penance," in *Rituals of Power: From Late Antiquity to the Early Middle Ages*, ed. Frans Theuvs and Janet L. Nelson, *The Transformation of the Roman World*, 8 (Leiden, 2000), pp. 185–224.

side by side with less public forms of penance.⁶⁶ The view that penance was in practice much more diverse and therefore much richer than is suggested by the simple dichotomy “public versus private” is gaining ground through studies of the actual manuscripts containing penitential texts as well as from liturgical texts.⁶⁷

More emphasis has also been put recently on the political uses to which rituals of public penance have been put. De Jong has, for example, analysed the intricate political circumstances of the public penance of Louis the Pious in 833.⁶⁸ Sarah Hamilton looked into other cases of royal penance, and also showed how penitential rites might enhance the social and political position of bishops. The work of Geoffrey Koziol and Gerd Althoff has revealed how much the ecclesiastical rites of penance were called upon in secular rituals of reconciliation, for example, in the *deditio*, the formal subjection to a winning party.⁶⁹ This suggests that rituals of penance were rather widespread in society and that they played a specific part in dispute settlement, although research into the role of penance in conflict studies is still wanting.⁷⁰

Penance and Cultural History

The role of penance and confession in early medieval society is still a matter of debate. Whereas Peter Brown has spoken of a “peccatization du monde” in this period as one of its defining characteristics, other historians deny that penance was an important aspect of the

⁶⁶ Hamilton, *The Practice of Penance*.

⁶⁷ R. Meens, “The Frequency and Nature of Early Medieval Penance,” in *Handling Sin. Confession in the Middle Ages*, ed. P. Biller and A. J. Minnis, York Studies in Medieval Theology 2 (Woodbridge, 1998), pp. 35–61; B. Bedingfield, “Public Penance in Anglo-Saxon England,” *Anglo-Saxon England* 31 (2002), 223–55; Price, “Informal Penance in Early Medieval Christendom.”

⁶⁸ M. de Jong, “Power and Humility in Carolingian Society: The Public Penance of Louis the Pious,” *Early Medieval Europe* 1 (1992), 29–52.

⁶⁹ G. Koziol, *Begging Pardon and Favor: Ritual and Political Order in Early Medieval France* (Ithaca and London, 1992), esp. ch. 6: “Supplication as Penance”; G. Althoff, *Verwandte, Freunde und Getreue. Zum politischen Stellenwert der Gruppenbindungen im früheren Mittelalter* (Darmstadt, 1990); idem, *Spielregeln der Politik im Mittelalter. Kommunikation in Frieden und Fehde* (Darmstadt, 1997); idem, *Die Macht der Rituale*.

⁷⁰ For an attempt to do so, see Rob Meens, “Sanctuary, Penance, and Dispute Settlement under Charlemagne: The Conflict between Alcuin and Theodulf of Orléans over a Sinful Cleric,” *Speculum* 82 (2007), 277–300.

daily lives of ordinary Christians.⁷¹ This case has been most forcefully argued by Alexander Murray, who concluded that repeatable confession was very rare before the 11th century, although he concedes that there were often other ways to atone for one's sins.⁷² Following a thesis advanced by Franz Kerff, Murray saw penitential books prescribing the penances for sins not in the hands of priests hearing confession but in the hands of bishops, as a basis of penal amercements.⁷³ Raymund Kottje, in contrast, stressed the pastoral character of penance through a study of the terminology used in these texts.⁷⁴ Moreover, it could be shown that many manuscripts containing penitential texts are of a kind that it is easy to imagine were in the hands of local priests caring for their flock.⁷⁵ Sources relating to the military in Carolingian times further suggest that penance and confession were regular features in Carolingian society.⁷⁶

The importance of the practice of confession, of course, relates closely to the significance of penitential handbooks as sources for cultural history, a field first explored by the American historian J. T. McNeill, who had written a dissertation on the topic of the Celtic Penitentials.⁷⁷ McNeill was interested not only in the influence of Irish penitentials on the Continent but also in the question of what these

⁷¹ Peter Brown, "Vers la naissance du purgatoire. Amnésie et pénitence dans le christianisme occidental de l'Antiquité tardive au Haut Moyen Âge," *Annales—Histoire, Sciences Sociales* 52 (1997), 1247–61.

⁷² A. Murray, "Confession before 1215," *Transactions of the Royal Historical Society*, 6th series, 3 (1993), 51–81, esp. 79.

⁷³ F. Kerff, "Mittelalterliche Quellen und mittelalterliche Wirklichkeit. Zu den Konsequenzen einer jüngst erschienenen Edition für unser Bild kirchlicher Reformbemühungen," *Rheinische Vierteljahrsblätter* 51 (1987), 275–86; idem, "Libri paenitentiales und kirchliche Strafgerichtsbarkeit bis zum Decretum Gratiani. Ein Diskussionsvorschlag," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kan. Abt.* 75 (1989), 23–57.

⁷⁴ R. Kottje, "Buße oder Strafe? Zur 'Iustitia' in den 'Libri Paenitentiales'," in *La giustizia nell'alto medioevo (secoli V–VIII)*, Settimane di Studio del centro italiano di studi sull'alto medioevo 42 (Spoleto, 1995), pp. 443–74.

⁷⁵ Meens, "The Frequency and Nature of Early Medieval Penance," pp. 35–61; Y. Hen, "Knowledge of Canon Law among Rural Priests: The evidence of two Carolingian manuscripts from around 800," *Journal of Theological Studies* 50 (1999), 117–34; idem, "Educating the Clergy: Canon law and liturgy in a Carolingian handbook from the time of Charles the Bald," in *De Sion exhibit lex et verbum domini de Hierusalem: Essays on Medieval Law, Liturgy, and Literature in Honour of Amnon Linder*, ed. Y. Hen (Turnhout, 2001), pp. 43–58.

⁷⁶ D. S. Bachrach, "Confession in the Regnum Francorum (742–900)," *Journal of Ecclesiastical History* 54 (2003), 3–22.

⁷⁷ The dissertation was written for University of Chicago and published in Paris: *The Celtic penitentials: their influence on continental Christianity* (Paris, 1923).

texts can tell us about popular culture in the period.⁷⁸ He furthered interest in handbooks of penance by the publication of a translation of many of these which he prepared with Helena Gamer.⁷⁹ Yet this strand of research did not really develop until much later. The first to examine penitential handbooks for questions of sexuality was the German ecclesiastical historian Peter Browe, but his research was not really continued.⁸⁰ The wealth of material concerning superstitious practices and sexuality in penitential texts was only seriously scrutinized from the 1980s onward, when the Annales school came to have a profound influence on medieval studies. Jean-Louis Flandrin, for example, in his wide-ranging studies on the history of the family, kinship, and sexuality, turned to the penitential handbooks of the early Middle Ages to explain attitudes towards sex and demographic patterns.⁸¹ The history of sexuality has since produced several studies concentrating on the contribution of penitential texts.⁸²

The other major theme that was studied with the help of penitential texts was that of popular religious attitudes. A landmark in this field was the publication of Aaron Gurevich's study of medieval popular culture, published in Russian in 1981 and translated into German, French, and English.⁸³ Gurevich felt very closely related to the Annales school,

⁷⁸ John T. McNeill, "The Celtic Penitentials and their Influence on Continental Christianity," *Revue Celtique* 39 (1922), 257–300 and 40 (1923), 51–103 and 320–41; idem, "Folk-paganism in the Penitentials," *Journal of Religion* 13 (1933), 450–66.

⁷⁹ J. McNeill and H. Gamer, *Medieval Handbooks of Penance* (1938; New York, 1990).

⁸⁰ P. Browe, *Beiträge zur Sexualethik des Mittelalters*, Breslauer Studien zur historischen Theologie (Breslau, 1932).

⁸¹ J.-L. Flandrin, *Un temps pour embrasser. Aux origines de la morale sexuelle occidentale (VI–XI siècle)* (Paris, 1983).

⁸² Raoul Manselli, "Vic familiale et éthique sexuelle dans les pénitentiels," in *Famille et parenté dans l'occident médiéval*, ed. G. Duby and J. Le Goff (Rome, 1977), pp. 363–78. See also P. Payer, *Sex and the Penitentials. The Development of a Sexual Code, 550–1150* (Toronto 1984); J. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago and London, 1987); M. Schwaibold, "Mittelalterliche Bussbücher und sexuelle Normalität," *Ius Commune. Zeitschrift für Europäische Rechtsgeschichte* 15 (1988), 107–33; A. Frantzen, "Between the Lines: Queer theory, the history of homosexuality, and Anglo-Saxon penitentials," *Journal of Medieval and Early Modern Studies* 26 (1996), 255–96; idem, "Where the Boys are: Children and sex in the Anglo-Saxon penitentials," in *Becoming Male in the Middle Ages*, ed. J. J. Cohen and B. Wheeler (New York and London 1997), pp. 43–66; H. Lutterbach, *Sexualität im Mittelalter. Eine Kulturstudie anhand von Bußbüchern des 6. bis 12. Jahrhundert*, Beihefte zum Archiv für Kulturgeschichte 43 (Cologne, Weimar, and Vienna, 1999).

⁸³ A. Gurevich, *Medieval Popular Culture: Problems of Belief and Perception* (Cambridge, New York, etc., 1988) [German translation: A. Gurjewitsch, *Mittelalterliche Volkskultur*,

from which he adopted the bipolar cultural model opposing an elite culture and a popular culture. Jean-Claude Schmitt, who also worked within the parameters of this opposition, shortly thereafter published his contribution to the religious history of France, concentrating on the manifestations of superstitious behaviour.⁸⁴ Schmitt used many other sources in addition to penitential texts, just as Valerie Flint did in her important contribution to this field of study.⁸⁵ Following the earlier work of Boudriot, the German folklorist Dieter Harmening had in the meantime questioned the validity of penitential sources for our knowledge of popular practices in a fundamental way, stressing the literary traditions behind the texts as we have them.⁸⁶

In Italy, Raoul Manselli initiated research into these texts, but it was mainly the Bolognese historian Maria Giuseppina Muzzarelli who used penitential texts to study aspects of early medieval culture, such as attitudes towards food, women and children.⁸⁷ In Germany, Raymund Kottje explored the importance of these texts for studying cultural and social history.⁸⁸ Arnold Angenendt regarded concepts of penance and retribution as essential symptoms of the archaic or archaizing character of early medieval Christianity. Cultic observances and formal conceptions of sin and satisfaction, implying a mechanical application of the tariffs found in the penitential handbooks, according to Angenendt were central features of early medieval penance. This stress on formality at

Munich, 1986; French translation: A. Gourevitch, *La culture populaire au Moyen-âge, simplices et docti*, Paris, 1996]. For an early judicious appraisal of this author, see R. Künzel, "Het harmonie- en het conflictmodel van een mediëvist. Over de historische methode van Aron Gurevich," *Theoretische Geschiedenis* 16 (1989), 369–81.

⁸⁴ J.-C. Schmitt, "Les 'superstitions'," in *Histoire de la France religieuse, I: Des dieux de la Gaule à la papauté d'Avignon (des origines au XIV^e siècle)*, ed. J. Le Goff (Paris, 1988), pp. 417–551.

⁸⁵ V. Flint, *The Rise of Magic in Early Medieval Europe* (Oxford, 1991).

⁸⁶ D. Harmening, *Superstitio. Überlieferungs- und theoriegeschichtliche Untersuchungen zur kirchlich-theologischen Aberglaubensliteratur des Mittelalters* (Berlin, 1979). See also Y. Hen, *Culture and religion in Merovingian Gaul A.D. 481–751* (Leiden, New York, and Cologne, 1995), pp. 154–206.

⁸⁷ M. Muzzarelli, "Norme di comportamento alimentare nei libri penitenziali," *Quaderni Medievali* 13 (1982), 45–80; idem, "Le donne e i bambini nei libri penitenziali: regole di condotta per una società in formazione," in *Profili di donne. Mito, immagine, realtà fra medioevo ed età contemporanea* (Galatino, 1986), pp. 145–92; idem, "Il valore della vita nell'alto medioevo: la testimonianza dei libri penitenziali," *Aevum* 62 (1988), 171–85.

⁸⁸ R. Kottje, "Ehe und Eheverständnis in den vorgratianischen Bussbüchern," in *Love and Marriage in the Twelfth Century*, ed. W. van Hoecke and A. Welkenhuysen (Leuven, 1981), pp. 18–40; R. Kottje, "Eine wenig beachtete Quelle zur Sozialgeschichte: Die frühmittelalterlichen Bußbücher," *Vierteljahrsschrift für Sozial- und Wirtschaftsgeschichte* 73 (1986), 63–72.

the cost of more ethical conceptions was, according to him, at the heart of medieval religiosity.⁸⁹ Research by his pupil Hubertus Lutterbach has followed in the same direction, confronting the archaic early Middle Ages with the more enlightened periods before and after.⁹⁰ Other historians have, however, argued that the texts themselves do not unambiguously confirm views of the mechanical application of penitential tariffs or of the undisputed observance of cultic rituals.⁹¹ One could argue that the texts were not used as authors intended them to be used, but again we do not know how exactly penitential handbooks and *ordines* were applied, while other texts which could inform us about the actual process of hearing confessions and fulfilling penances are scarce.

Conclusion

Despite many new and exciting studies in the field of early medieval penance, the historiography on this theme has long been dominated by the towering figures of Wasserscheben, Schmitz, and Poschmann. We are still mainly using texts as they were established by Wasserscheben and Schmitz, while the historical framework as it was elaborated by Poschmann is only recently being questioned in a fundamental way by historians such as Mayke de Jong and Sarah Hamilton. These last concentrate on aspects such as the publicity of penance and its political use. The role of penance in society at large is still unclear, particularly as far as its importance in the early Middle Ages is concerned. An analysis of the geographical and chronological dissemination of penitential manuscripts in combination with an analysis of the manuscript context—i.e., the texts surrounding penitential texts in a

⁸⁹ See, e.g., his monumental *Geschichte der Religiosität im Mittelalter* (Darmstadt, 1997), pp. 626–44.

⁹⁰ See, e.g., H. Lutterbach, “Intentions- oder Tathaftung? Zum Bußverständnis in den frühmittelalterlichen Bußbüchern,” *Frühmittelalterliche Studien* 29 (1995), 120–43; and idem, “Die mittelalterlichen Bußbücher—Trägermedien von Einfachreligiosität,” *Zeitschrift für Kirchengeschichte* 114 (2003), 227–44.

⁹¹ Pierre J. Payer, “The Humanism of the Penitentials and the Continuity of the Penitential Tradition,” *Mediaeval Studies* 46 (1984), 340–54; Rob Meens, “Ritual Purity and the Influence of Gregory the Great in the Early Middle Ages,” in R. Swanson, ed., *Unity and Diversity in the Church*, Studies in Church History 32 (Oxford, 1995), pp. 31–43; R. Kottje, “Intentions- oder Tathaftung? Zum Verständnis der frühmittelalterlichen Bußbücher,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Kan. Abt.* 91 (2005), 738–41.

specific codex—might provide some clues as to their actual use. Only after such questions have been answered satisfactorily can we hope to assess the significance of the penitential process for our understanding of early medieval culture and society.

JURIDICAL ADMINISTRATION IN THE CHURCH AND PASTORAL CARE IN LATE ANTIQUITY*

Kevin Uhalde

In the last decade of the 5th century, Ruricius, the bishop of Limoges (c.485–510), wrote to Praesidius, a venerable acquaintance whose career as a public official under the Visigoths was coming to a close. Ruricius drew an admiring portrait of this “sublime and always magnificent lord” standing high on a promontory, where he looked down upon the “perfidious, troublesome, and bitter sea” he now left behind.¹ Ruricius had written to Praesidius at least once while the latter still held governmental office, when the bishop pleaded on behalf of two criminals whom he had assigned penance for an unspecified offence. When they went to face Praesidius in secular court, Ruricius interceded on their behalf out of a two-fold pastoral obligation: for the sake of these criminals turned penitents and for the sake of Praesidius’s own salvation. For surely, the bishop remarked, he knew what the apostle James had written, that “there will be judgment without pity for him who does not have pity.”² Now, by withdrawing completely from the secular world and living a penitential life, Praesidius would ready himself for divine judgement after death.

The performance and evocation of penance helped to shape daily acts of piety, notions of forgiveness, and the way people anticipated the Final Judgement throughout the late antique world. Latin sources from the

* This essay is a version of material presented in chapter 4, “Mercy not Justice: how penance became a worthy act of self-incrimination” in my book *Expectations of Justice in the Age of Augustine* (Philadelphia, 2007). It is reprinted by permission of the University of Pennsylvania Press.

¹ Ruricius, *Ep.* 2.13 (c. 490/500), ed. B. Krusch, *Monumenta Germaniae Historica* [hereafter MGH] *Auctores antiquissimi* [hereafter AA] 8 (1887), p. 322; *Ruricius of Limoges and Friends: A Collection of Letters from Visigothic Gaul*, trans. R. W. Mathisen, *Translated Texts for Historians* [hereafter TTH] 30 (Liverpool, 1999), pp. 155–57; J. R. Martindale, *Prosopography of the Later Roman Empire* [hereafter *PLRE*] 2 (Cambridge, 1980), p. 903.

² Ruricius, *Ep.* 2.12 (c. 490/500), MGH AA 8:321, *Ruricius of Limoges and Friends*, pp. 154–55; quote is James 2:13.

fourth through sixth centuries, however, are the focus of this essay.³ Like other pastors and laypeople between the 4th and 6th centuries, Ruricius and Praesidius shared a notion of penance broader than many later commentators would attribute to them. Late antique penance might seem a rigid and unworkable thing in retrospect, particularly at times when efforts for reform peaked within the western Church, whether during the Carolingian reforms of the 9th century, or around the fourth Lateran council in 1215. Such movements, obviously, did not affect what people in late antiquity thought about penance. Serious offenders against religious law, if they desired forgiveness and reconciliation with the Christian community, submitted to liturgical penance, assigned by a bishop and concluded by his laying on of hands in a reconciliation ceremony. There was no absolute agreement as to precisely what sins were serious enough to require this recourse, but topping the list were homicide, idolatry, and adultery. Julian Pomerius, a Mauritanian who served as a priest in Arles and another of Ruricius's correspondents, distinguished between slight sins [*parva peccata*] and more serious crimes [*crimina*]. Criminals were subject to human judgement under secular law and also required liturgical penance—what Julian called “voluntary excommunication,” by which repentant criminals judged and sentenced themselves.⁴ So it may have been common for pastors who oversaw the juridical administration of penance also to intercede with public officials, as Ruricius did with Praesidius. It worked the other way as well. In 541, Ruricius's grandson, also called Ruricius, represented the city of Limoges at a meeting of bishops in Orléans. That council expressly required that homicides perform penance, even if a secular ruler—or the relatives of their victims—had already forgiven them.⁵

³ The distinction between eastern and western penance during this period is deeply embedded in the historiography and reflects real contemporary differences, including substantial and distinctive continuities within western traditions. These differences, combined with the practical constraints of a short overview, prohibit a broader focus than presented here. Nonetheless, there is a real need for comparative analyses, in this period of transition above all, such as the recent attempt by C. Gallagher, *Church Law and Church Order in Rome and Byzantium: A Comparative Study* (Aldershot, 2002), pp. 1–36, on Dionysius Exiguus and John Scholastikos. A focus on the relationship between pastoral care and the juridical administration of penance may serve as a preliminary step toward this end.

⁴ Julian Pomerius, *De vita contemplativa* 2.7.3, *Patrologiae cursus completus. Series Latina*, ed. J.-P. Migne (Paris, 1844–91) [hereafter PL], 59:452A–B.

⁵ Orléans IV (a. 541) c. 28. All references to Gallic councils are from the following editions and translations: *Concilia Galliae, a. 314–a. 506*, ed. C. Munier, *Corpus Christianorum*, Series Latina [hereafter CCSL], 148 (Turnhout, 1963); *Concilia Galliae*,

Not all penitents were criminals, however. Those like Praesidius, who willingly devoted a portion of their lives toward penitential devotion, deserved respect; the title “penitent” itself was worthy of record on their tombstones. One such inscription from the 6th century now rests in the crypt of a village church, north of Grenoble in France: “Here lies the penitent Ervalde, a noble woman fearful of God and hoping for resurrection in eternal life. She lived forty-two years and six months, and died 28 October in the fourteenth year of the indiction.”⁶

Celsus, a relative of Ruricius, was also of this sort—what we might call a professional penitent. Like Praesidius, he had reached “the port of pardon through the privilege of penitence” and looked down from secure heights upon the “whirlwinds of the world.”⁷ When Celsus received Ruricius’s written congratulations on his recent profession of penitential devotion sometime before 485, Ruricius was not yet a bishop and still floundered in the “oceanic tempests” of worldly affairs that Celsus had escaped. Penance done well might be an inspiration: Ruricius not only praised the penitential efforts of others throughout his life but also contemplated joining them himself. In his mid-thirties, while husband to a noble woman and father of at least five children, he carried on his own correspondence with the bishop, Faustus of Riez, whom Ruricius would meet in person only later, perhaps not until Faustus’s long period of exile beginning in 477. Faustus monitored Ruricius’s passage through the “tempests of this life” to solid ground and the “port of religion”; Ruricius became a lay religious [*conversus*], a

a. 511–a. 695, ed. C. de Clercq, CCSL 148A (1963); *Les canons des conciles mérovingiens (VI^e–VII^e siècles)*, trans. J. Gaudemet and B. Basdevant, 2 vols, Sources Chrétiennes [hereafter SC] 353–54 (1989). For the younger Ruricius, see *PLRE* 3B:1099–1100, s.v. “Ruricius 2” with *Ruricius of Limoges and Friends*, pp. 26–27.

⁶ *Recueil des inscriptions chrétiennes de la Gaul antérieures à la Renaissance carolingienne* [hereafter *RICG*] XV: *Viennoise du nord*, ed. F. Descombes (Paris, 1985), no. 283, pp. 724–27, from Saint-Sixte-Merlas, canton de Saint-Geoire-en-Valdaine, Isère: “In huc loco requiescit / penitens ERVALDE te- / mens Deum femena C / domena, in spe resurexi- / onis uite aeternae, / quae uixit annos qua- / draginta et duos, min- / ses sex; obiit quinto / kalendas nouembris, / indixione XIII.” Descombes’ suggestion that this is a *conversa* “comme souvent” deduces from the scholarship, not from the evidence.

⁷ Ruricius, *Ep.* 1.13 (c. 475/85), MGH AA 8:307, *Ruricius of Limoges and Friends*, pp. 124–25. In some cases, “professional” penitents [*professa paenitentia*, *professio*, or similar] might in fact be liturgical penitents: e.g., Tours I (a. 461) c. 8; Avitus of Vienne, *Ep.* 17 (c. 516/17), ed. R. Peiper, MGH AA 6.2 (1883), p. 49, *Avitus of Vienne: Letters and Selected Prose*, trans. D. Shanzer and I. Wood, TTH 38 (2001), pp. 287–89; Épaone (a. 517) c. 3, 23; J. Gaudemet, “Épaone (concile d’),” *Dictionnaire d’histoire et de géographie ecclésiastiques*, ed. R. Aubert and É. Van Cauwenbergh, vol. 5 (Paris 1963), cols 524–45.

“spontaneous confessor of [his] own iniquity.”⁸ For Ruricius, however, unlike Praesidius, Celsus, and still other professional penitents he would monitor, penance was the beginning of a religious life that would culminate in the episcopate.⁹

Even in the technical vocabulary of church officials, boundaries between penitential and religious orders during late antiquity often were indistinct. They certainly were permeable in practice: penitents became clerics, clerics performed penance, and penitents joined lay religious, sworn virgins and widows, and even priests and bishops in the ranks of the living saints, which encompassed all those who made a profession of holiness [*professio sanctitatis*], a solemn vow to apply themselves wholly to the process of spiritual perfection.¹⁰ Moreover, the boundary that separated ordinary Christians from penitents—whether from liturgical penitents or from professionals like Praesidius, Ervalde, and even Ruricius—was the least absolute of all. Penitents provided living models for those mundane, less sensational, more numerous sinners whose gestures to obtain forgiveness might consist only of prayers and pious works such as almsgiving. Meanwhile, the performance of liturgical penance demonstrated, with drama and economy, the fruits of contrition and the joy of forgiveness to all its participants and spectators alike. Liturgical penance did not need to happen often or involve large numbers of penitents. In fact, it did not need to happen at all, because the stories of biblical penitents such as Adam, the first human,

⁸ Ruricius, *Ep.* 1.1–2 (c. 475/7), MGH AA 8:299–301, *Ruricius of Limoges and Friends*, pp. 86–92; Faustus, *Ep.* 2 (c. 477), ed. R. Demeulenaere, CCSL 64 (1985), pp. 408–12 at 409, *Ruricius of Limoges and Friends*, pp. 96–101 at 97; the idea that Ruricius professed penance discomforted H. G. J. Beck, *The Pastoral Care of Souls in South-East France during the Sixth Century* (Rome, 1950), pp. 212–13; more on *conversi*, e.g., Orléans III (a. 538) c. 27 (24), in Cyrille Vogel, *La discipline pénitentielle en Gaule des origines à la fin du VII^e siècle* (Paris 1952), pp. 128–38; for Faustus, see D. J. Niles, “*De Subitanea Pœnitentia* in the Letters of Faustus of Riez and Avitus of Vienne,” *Recherches de théologie ancienne et médiévale* 55 (1988), 30–40; and R. Barcellona, “La questione antropologica nell’epistolario di Fausto di Riez: la penitenza, l’anima, la salvezza,” *Cassiodorus* 4 (1998), 83–123.

⁹ E.g., Agricola, who accepted penance while sick and now was obliged to fulfil his commitment. Notice that Ruricius refers only to *conversio*, not penance, although the context is clear: Ruricius, *Ep.* 1.32 (c. 502/506), MGH AA 8:335, *Ruricius of Limoges and Friends*, pp. 190–91: “Superest, ut nunc conversionem quam protulisti in veste probetis in corde et haec commutatio inter indumentum vestrum habeatur... peccator enim quo die conversus ingemuerit, tunc salvus erit...”

¹⁰ Salvian of Marseille, *Ep.* IX.10–11, ed. G. Lagarrigue, SC 176 (1971), p. 126; M. de Jong, “Transformations of Penance,” in *Rituals of Power: From Late Antiquity to the Early Middle Ages*, ed. F. Theuvs and J. L. Nelson, *The Transformation of the Roman World*, 8 (Leiden, 2000), pp. 185–224 at 205–07.

and David, the poet and king, proved the same, essential lesson: mercy rewarded remorse. In times of turmoil and temptation, as late antique pastors such as Ruricius urged their congregants, in the regular course of their daily lives, all Christians should cling to penance.¹¹

The Public Life of Penitents

The “grand narrative” of the history of penance, which a number of recent scholars have been working to revise, is not only mistaken and misleading, it is also ancient.¹² According to this narrative, almost simultaneously with the conversion of Constantine and triumph of Christianity in the 4th century, churchmen and laypeople set to work devastating a spiritual landscape that once had been fertile. Christians after Constantine, it has been said, watched while a golden age receded into the past, a lost moment when pastors had been sensitive to the capacities of their followers and ordinary Christians were committed to spiritual excellence. This concern over a new-sprung negligence expressed by late antique Christians led many to conclude that penance virtually ceased to exist in practice. By the 5th century, “there was no sacramental remedy at their disposal,” wrote Bernhard Poschmann, conjuring an image of penitential doldrums that derived not from evidence and certainly not from quantitative proof but from value judgements; this was a qualitative evaluation of late antique penance.¹³ Liturgical penance was “unapplied because [it was] inapplicable,” explained Cyrille Vogel later. “The systematic refusal of any indulgence adapted to human weakness caused an almost complete abandonment of penance on the part of the faithful. It quickly reached an untenable situation for the spiritual life of Christians.”¹⁴ Everyone, it

¹¹ Ruricius, *Ep.* 2.4 (c. 485/95), MGH AA 8:314, *Ruricius of Limoges and Friends*, p. 140. See É. Rebillard, *In hora mortis: évolution de la pastorale chrétienne de la mort aux IV^e et V^e siècles dans l'occident latin* (Rome, 1994).

¹² The phrase is from de Jong, “Transformations of Penance”; also see P. Brown, *The Rise of Western Christendom: Triumph and Diversity, A.D. 200–1000*, 2nd ed. (Oxford, 2003), pp. 255–56.

¹³ B. Poschmann, *Penance and the Anointing of the Sick*, trans. F. Courtney (New York, 1964), p. 123: “No amount of pastoral care... could make up for the privation of the sacrament.”

¹⁴ C. Vogel, “La discipline pénitentielle en Gaule des origines au IX^e siècle: Le dossier hagiographique,” *Revue des sciences religieuses* 30 (1956), 1–26 and 157–86 at 23; idem, *Le pécheur et la pénitence dans l'église ancienne* (Paris, 1966), pp. 27–28.

would seem, contributed to this “untenable situation.” Lay people were the agents of “grave moral declension,” while church officials clung to rigid standards that had been outdated since before the conversion of Constantine.¹⁵ What was left, in Vogel’s surmise, was “a complete ‘penitential void’.”¹⁶

The origins of this mythical decline are ancient. Even in late antiquity, some bishops weighed their own congregants against bygone generations and found them wanting. More than any early Christian bishop, the layman Tertullian (died c.225) provided future generations with a prescription for proper penance, as challenging as it was compelling. In his day, Tertullian’s writings insinuated for his readers, Christian congregations had been small, tightly knit, and hardened by fear of persecution or by pride in membership of a fiercely devoted elite. For Tertullian, the performance of penance was essential to forgiveness and reconciliation, because “while it abases the individual, it raises him; while it covers him with squalour, it renders him more clean; while it accuses, it excuses; while it condemns, it absolves.”¹⁷ The presence of sin was a contagion; people who sinned had to be singled out; everyone had to know they had corrected their errors. A gruelling and public exercise of penance ensured that a sinner could not simply experience regret like any pang of conscience. Dressed in sackcloth, covered in ashes, the penitent lay before the priest at the feet of the entire congregation, who served as ambassadors before God on his behalf. Whether or not Tertullian’s standards reflected reality, they often set the standard for penance later on. Pacian, the bishop of Barcelona (died before 392), tried to rile his congregation into a suitable fever of devotion, while putting on a display of embarrassment and frustration that they were not up to the task. Half-hearted, sloppy executions of penitential devotion disgusted him; they evoked nothing less repulsive than the way “filth stinks most when you stir it.”¹⁸

¹⁵ O. D. Watkins, *History of Penance: Being a Study of the Authorities*, 2 vols, repr. ed. (New York, 1961), pp. 412–13; J. Orlandis and D. Ramon-Lissón, *Historia de los concilios de la España romana y visigoda* (Pamplona, 1986), pp. 61–63.

¹⁶ C. Vogel, “Penance,” in *Encyclopedia of the Early Church*, ed. A. Di Berardino, trans. A. Walford, 2 vols (Oxford and New York, 1992), p. 667.

¹⁷ Tertullian, *De paenitentia* 9, ed. C. Munier, SC 316 (1984), pp. 180–82, with his introduction, pp. 11–104; J. E. Lynch, “The Limits of *Communio* in the pre-Constantinian Church,” *Jurist* 36 (1976), 159–90 at 176–81; C. Chartier, “L’excommunication ecclésiastique d’après les écrits de Tertullien,” *Antonianum* 10 (1935), 301–44, 499–536.

¹⁸ Pacian, *Sermo de paenitentibus* 1.4, ed. C. Granado, trans. C. Epitalon and M. Lestienne, SC 410 (1995), p. 120; Vogel, *Pécheur et la pénitence dans l’église ancienne*, pp. 88–101;

Augustine of Hippo (354–430), a contemporary of Pacian, observed a similar situation among his own congregants. Some people did not take their commitment to penance as seriously as they ought, turning what should have been a “place of humility” into a “place of iniquity.” As seemed to be the case in Barcelona, the problem stemmed, at least in part, from over-confidence. In one Easter sermon, Augustine showed his exasperation. “There are lots of penitents here,” he acknowledged, “they make a very long line for the imposition of hands,” and when told to pray, they prayed. However, this was only the visible part of a longer process, and the most important work went on outside the walls of the basilica and often unseen. “I scrutinize [*discutio*] the penitents,” Augustine continued, “and I find people who live in sin.”¹⁹ Having already invoked the apostolic keys to excommunicate recalcitrant sinners, the bishop followed their progress through penance and examined them like a good pastor. Their success or failure was a pastoral problem: it pertained not only to the remorse and devotion of sinners but also to the vigilance of their pastor, which helps explain why Augustine was so careful to assert to his own congregation that he had examined the penitents. He was doing his part as bishop, even if some penitents were not doing theirs.

Although their pastors might doubt their commitment or sincerity, one thing is clear: some Christians did not shrink away from being penitents. Indeed, Augustine appears to have uncovered a sort of penitential bottleneck, where people lingered in the condition of penitent wilfully, in no hurry truly to emend their behaviour. They might have had good reason to prefer the penitential life over its fulfilment. Authors of the “grand narrative” always emphasize that the life facing reconciled penitents was narrowly constrained. While they might falter along the path up to reconciliation, as Pacian and Augustine complained, any subsequent misstep could be fatal to their souls. The legal sources tell us that liturgical penance was not repeatable in theory, although the same evidence confirms that theory did not always control practice on this matter.²⁰ Thereafter, even slight sins must await forgiveness until

J. Fredouille, “Du *De paenitentia* de Tertullien au *De paenitentiae institutione* de Pacien,” *Revue des études Augustiniennes* 44 (1998), 13–23.

¹⁹ Augustine, *Serm.* 23.8, ed. Poque, SC 116 (1966), p. 276; de Jong, “Transformations of Penance,” pp. 192–93.

²⁰ It is significant that penitential lapses posed a more common problem, at least in the legislation, than attempts at reiteration of penance, e.g., Elvira (a. 306) c. 7 [references to Spanish councils are from *Concilios visigóticos e hispano-romanos*, ed. J. Vives,

the Final Judgement, when God would exhibit more justice than mercy, and it would be too late for penance to have effect. Therefore, again in theory and according to legal sources, after reconciliation, penitents endured certain prohibitions—from sex, for example, and from military service, litigation, and clerical ordination. Vogel famously epitomized this condition as “la mort civile et sociale.” Éric Rebillard, however, recently softened it to “une façon de vivre en état de pardon.” His slight modulation reflects a major departure from the scholarly chorus of penitential decline.²¹ For all its hardships before and after reconciliation, along with the incontrovertible and frankly unsurprising evidence that some penitents abjectly failed, there was honour in penance. The handful of epitaphs commemorating dead Christians as penitents, including that of Ervalde, could represent professional penitents or, just as feasibly, liturgical penitents who had attained reconciliation.²² Despite their occasional impatience with particularly stubborn cases, bishops allowed, and perhaps encouraged, respect for penitents, even those who died abroad or at sea without absolution. Christians commemorated them in the mass through prayers and offerings; anything less would be sinful [*nefas*].²³

T. Marín Martínez, and G. Martínez Díez (Barcelona and Madrid, 1963)]; Tours I (a. 461) c. 8; Vannes (a. 461–91) c. 3; “Arles II” (c. 501) c. 21 (penitent widow) and 25 with R. Mathisen, “The ‘Second Council of Arles’ and the Spirit of Compilation in Late Roman Gaul,” *Journal of Early Christian Studies* 5:4 (1997), 511–54; Agde (a. 506) c. 15; Orléans I (a. 511) c. 11; Épaone (a. 517) c. 23; Orléans III (a. 538) c. 28 (25); Eauze (a. 551) c. 1; Paris III (a. 556–73) c. 5, along with lay religious and virgins; Toledo III (a. 589) c. 11, most famous for condemning repetition of liturgical penance (“quotienscumque peccare...totiens a presbytero reconciliari”), treats those who “vel infra poenitentiae tempus vel post reconciliationem relabuntur”; Barcelona II (a. 599) c. 4.

²¹ Vogel, *La discipline pénitentielle*, p. 117; Rebillard, *In hora mortis*, p. 226.

²² *RICG* XV, no. 98A (a. 557/8), pp. 401–04; *ibid.* no. 227 (a. 527), pp. 609–11; *ibid.* no. 283, pp. 724–27 (quoted above); *Corpus Inscriptionum Latinarum* [hereafter CIL] II²/5, no. 358 (s. VI ex. / VII in.), p. 95: “... [puer]i- / ti(a)e flores nobi[s abs]- / tulit luctu pl[ancu?] - / que gravi LA+ [-4-5-] / vixit annos X[-4?-] / recepta cum p[oeni]- / tentia in pace [reque]- / it sub die XI[-0-2- Kal(endas)] / Iulias era DC[C-]”; CIL II²/7, no. 136 (a. 650), p. 39 = *Inscripciones cristianas de la España romana y visigoda*, ed. D. J. Vives (Barcelona, 1969), no. 178 (p. 54): “(crux) Maria fidelis Xpi in vita sua / h(u)nc diligens loc(u)m ibiq(u)e suum (h)uma(tu)m est c(o)rp(u)s / q(u)atuor deni uno supervixit annos c(u)m pen(i)ten- / tia rec(e)ssit in pace d(ie) VII Id(us) Martia(s) secundo R- / eccisvinti regnan(t)i(s) c(u)m patr(e) pr(in)cipis anno”; also *Inscripciones cristianas de la España*, nos. 42 = 480 (a. 588), 44 (a. 657), 66 (a. 662), 142 (a. 636), 586 (pp. 21–22, 27, 45, 163–64, 324); C. Vogel, “La discipline pénitentielle dans les inscriptions paléochrétiennes,” *Rivista di Archeologia Cristiana* 42 (1966), 317–25.

²³ Vaison I (a. 442) c. 2; *Statuta Ecclesiae Antiquae* (compiled c. 475) c. 22 (LXXIX) with C. Munier, *Les Statuta Ecclesiae Antiquae: Édition, Études critiques* (Paris, 1960).

Late antique bishops in general preached, wrote, and legislated almost as much about their own role in the penitential process as about the role of the penitents. The juridical administration of penance was directly tied to the spiritual gifts bishops claimed to enjoy, particularly their ability to discern the spiritual capacities of the people charged to their pastoral care. Although Cresconius, an early compiler of church canons, suggested that legal knowledge might help bishops decide whether to judge sinners “according to severity or leniency,” neither he nor the laws he edited described how that process worked in practice.²⁴ As a modern tabulator of many of the same laws, Vogel concluded from his efforts to uncover a stable penitential system that such a search missed the point of late antique penance: “It is nothing. The bishop remained the sole judge in the matter, for each particular case.”²⁵ While bishops might reward slack performances with longer penances, good penitents enjoyed their pastors’ “moderation and clemency” and the “humanity” of the Church.²⁶ Bishops were to reckon the weight of sins objectively, appraise confessions, and gauge the sincerity behind the lamentation of penitents before making liturgical supplication for those worthy of forgiveness.²⁷ Formulating the duration and intensity of penance was an exercise of judgement [*arbitrium*] and an extension of episcopal authority [*potestas*].²⁸

Late antique bishops directed penance from a commanding promontory. According to four bishops who stayed behind after a small council at Tours in 567 and drafted a letter to the Christian people [*ad plebem*], responsible bishops executed the pastoral role Ezekiel had described

²⁴ R. Somerville and B. C. Brasington, *Prefaces to Canon Law Books in Latin Christianity: Selected Translations, 500–1245* (New Haven, 1998), p. 28.

²⁵ Vogel, *La discipline pénitentielle*, pp. 32–33; P. Saint-Roch, *La pénitence dans les conciles et les lettres des papes des origines à la mort de Grégoire le Grand* (Vatican City, 1991), pp. 29–31; Brown, *Rise of Western Christendom*, p. 255.

²⁶ *Statuta Ecclesiae Antiqua* c. 19 (LXXV) (“negligentiores paenitentes tardius recipiantur”); Lérída (a. 546) c. 9 (“moderatione et clementia episcopi”), with Orlandis and Ramon-Lissón, *Historia de los concilios*, pp. 129–30; “Arles II” (c. 501) c. 10 (“pro ecclesiastica humanitate”).

²⁷ Innocent I, *Ep.* 27.7.10, PL 20:559; Angers (a. 453) c. 12; Leo I, *Ep.* 108.3–4 (a. 432), PL 54:1012–13, with P. Adnès, “Pénitence,” in *Dictionnaire de Spiritualité* 14 (Paris, 1984), cols 943–1010 on *sacerdotalis supplicatio*.

²⁸ Mâcon I (a. 581–83) c. 12 (“quamdiu episcopo...uisum fuerit”); *Breviarium Hipponense* (a. 393) c. 30a, ed. C. Munier, CCL 259 (1974), p. 41 (“episcopi arbitrio paenitentiae”); Eauze (a. 551) c. 1 (“sacerdotis...arbitrium”); Orléans IV (a. 541) c. 21 (“iuxta pontificis districtiorem”); Orléans (a. 541) c. 8 (“in episcoporum potestatem”) and 28 (“in sacerdotis potestate”).

ages ago by calling people to penance.²⁹ Pope Leo I (440–61) described the administration of penance as a power bestowed on the leaders of the Church by Jesus “the mediator,” who joined with them in guiding penitents through the process.³⁰ In 452, Leo wrote to Nicetas, bishop of Aquileia, informing him that “the length of the penance, with moderation being observed, is left to your judgement [*tuo constituyente iudicio*].” A bishop should determine the duration of penance,

proportionate to the devoted dispositions you see in the penitents; you are likewise to be considerate of old age and take note of the requirements of sickness and of all trials. If anyone is so seriously burdened by these that his safety is despaired of while he is doing penance, it is proper that through priestly solicitude he be assisted by the favour of being admitted to communion.³¹

Historians have long deliberated whether Leo’s “priestly solicitude” was exceptionally lenient.³² Gallic bishops, at least, tended toward the same standards of pastoral care, requiring that the “remedy and hope of forgiveness by the Church” be made available for everyone.³³ Leo’s apparent leniency toward faltering penitents, moreover, was not far removed from Pacian and Augustine’s rebukes. Whether bishops were cajoling their congregants or exhorting their colleagues, they could not separate discussions of penance from their own, most basic, pastoral responsibilities.

Bishops demanded more from themselves than the disciplinary “power of the keys” [*potestas clavium*] that Jesus had bestowed upon the Church to bind and loose sinners (Mt 16:19). While excommunication generally ended when the scandal disappeared and the sinners “rush[ed] back to peace,” penance followed a more subtle timetable.³⁴ Bishops wielded a “spiritual sword”—a tool for scrutiny as much as it was a weapon for defending the Church.³⁵ When sinners showed remorse, good pastors

²⁹ Tours II (a.567), *Epistula ad plebem*, par. 1, SC 354:392; cf. Ez 34:10.

³⁰ Leo I, *Ep.* 108.2 to Bishop Theodore of Fréjus, PL 54:1011C–1012A.

³¹ Leo I, *Ep.* 159.5, PL 54:1138A, trans. E. Hunt, *Fathers of the Church* [hereafter FOC] 34 (Washington, D.C., 1957), p. 250.

³² Rebillard, *In hora mortis*, pp. 185–98; also J. Gaudemet, *L’Église dans l’empire romain (IV^e–V^e siècles)* (Paris, 1958), pp. 678–79; Vogel, *Pécheur et la pénitence dans l’église ancienne*, pp. 167–76.

³³ Épaone (a. 517) c. 36.

³⁴ “Arles II” (c. 501) c. 50; Vogel, *La discipline pénitentielle*, p. 66; Adnès, “Pénitence,” col. 962.

³⁵ E.g., Ambrose, *De officiis* II.8.46–47, ed. I. J. Davidson, 2 vols (Oxford, 2001), p. 294, with commentary at p. 730; Scripture: Lk 2:35, Eph 6:17, Heb 4:12; Tours II

turned away the sharp edge of excommunication and offered instead a medicinal edge [*medicinale ferrum*]. This excised the sin, according to a 5th-century text from Rome, and allowed “the tortures of penance [to] restore the soul wounded by iniquity.”³⁶ Besides being a metaphor for bishops’ power both to discipline and to reconcile, medicine provided preachers with their most common language for explaining penance. In Ravenna, for example, Peter Chrysologus (406–50) preached that human frailty and sin was a fever, a fiery inflammation caused by internal imbalances. The cool humility of penance was its cure.³⁷

Oftentimes, actual physical illness accompanied penance. Church leaders complained about laypeople putting off penance until the last possible minute, when they requested the “blessing of penance” along with the Eucharist, which many texts refer to as the *viaticum*.³⁸ Contemporary critics saw deathbed reconciliation as an imperfect remedy, for without preparation through penitential works and formal absolution it could not be certain to work. Here contemporary and modern commentators alike have seized upon their most compelling evidence that, during late antiquity, penance declined in frequency along with lay spirituality: tardiness, to some, surely entailed temerity. What late antique bishops learned at the bedsides of the dying, however, concerned the practical constraints of their pastoral function as much as it pertained to lay devotion. The wielder of the “spiritual sword,” which revealed the spiritual capacities of sinners, was baffled when the infirm lost the capacity of speech, was seized in some sort of fit, or ceased responding altogether. If possible, a mere nod sufficed to initiate the blessing, but otherwise bishops relied on friends and the family’s testimony that the

(a. 567) c. 21 (20): “oris gladio,” cf. Rv 2:16; R. H. Helmholz, “Excommunication and the Angevin Leap Forward,” *Haskins Society Journal* 7 (1995), 133–49 at 136–38.

³⁶ Archdeacon of Rome, *Serm.* 1.1, ed. F. Heylen, CCL 9 (1957), p. 355; more on this text below. Among many similar treatments see Julian Pomerius, *De vita contemplativa* 2.7.3, PL 59:451B; Caesarius of Arles, *Serm.* 59.6, ed. G. Morin, 2 vols, CCL 103–04 (1953), 103:261–62, trans. M. Delage, *Sermons au peuple*, 3 vols, SC 175, 243, 330 (1971–86), 330:42–43 with n. 1: in this case as elsewhere, Delage, following Poschmann, is at pains to insist that Caesarius was not speaking of liturgical penance.

³⁷ Peter Chrysologus, *Serm.* 41.2, ed. A. Olivari, 3 vols, CCL 24–24B (1975–82), 24:232, with Rebillard, *In hora mortis*, pp. 169–85 at 170–71.

³⁸ E.g., Gerona (a. 517) c. 9 (“poenitentiae benedictionem quod viaticum deputamus”); Barcelona II (a. 599) c. 4, with E. Göller, “Das spanisch-westgotische Bußwesen vom 6. bis 8. Jahrhundert,” *Römische Quartalschrift für christliche Altertumskunde und Kirchengeschichte* 37 (1929), pp. 245–313 at 247–50. See Rebillard, *In hora mortis*, 199–224.

dying person had asked for penance. Should the patient recover, the witnesses were obliged with the bishop to see the promise fulfilled.³⁹

The Penitential Life of Religious Professionals

Bishops otherwise assumed the same array of responsibilities toward deathbed penitents as toward liturgical or professional penitents, from assigning proper penance to congratulating those who recovered on their new way of life. Among the recipients of Ruricius's exhortatory letters to penitents was a nobleman named Agricola, whose father, Eparchius Avitus, had been a general, emperor (455–56), and bishop, and was buried in Brioude at the feet of Saint Julian of Vienne. Recently Agricola had been ill and had become a penitent. Once his health returned and his "feelings were composed," despite the circumstances of his conversion, Ruricius encouraged him to be a devoted penitent, as he had encouraged Praesidius and Celsus.⁴⁰ Deathbed penance was as much a matter of pastoral surveillance as any other penance. It was hardly surprising that hardship produced penitents, when bishops tied penance and the Eucharist closely together with physical well-being. They even suggested that these sacraments might substitute directly for illicit potions, spells, and phylacteries, which were banned on pain of penance.⁴¹ Among the numbers of penitents who walked away healthy, moreover, might well have been future members of the clergy. Bishops at Gerona in 517 expressly allowed a person to be admitted to the clergy who had received the *viaticum* while ill, so long as he had not gone through public humiliation in the liturgy after recovering his health [*postmodum revalescens caput poenitentiae in ecclesia publice non subdiderit*].⁴²

³⁹ E.g., *Breviarium Hipponense* (a. 393) c. 32, CCSL 149:42; Leo I, *Ep.* 108.5 (a. 432); Orange I (a. 441) c. 3 and 11 (12); *Statuta Ecclesiae Antiqua* c. 20 (LXXVI); "Arles II" (c. 501) c. 28 (27); Barcelona I (a. 540) c. 8; Rebillard, *In hora mortis*.

⁴⁰ Ruricius, *Ep.* 2.32 (c. 502/506), MGH AA 8:335, *Ruricius of Limoges and Friends*, pp. 190–91; Agricola's father: Gregory of Tours, *Liber Historiarum* [hereafter *LH*] 2.11, ed. B. Krusch and W. Levison, 2 vols, MGH Scriptores Rerum Merovingicarum [hereafter *SRM*] 1.1 (1951), pp. 60–61; *PLRE* 2:196–98, s.v. "Eparchius AVITUS 5."

⁴¹ E.g., Caesarius, *Serm.* 19.4–5 and 50.1, CCSL 103:89–91, 224–25.

⁴² Gerona (a. 517) c. 9: "His uero qui aegritudinis languore depressus poenitentiae benedictionem, quod uaticum deputamus, per communionem acceperit, et postmodum reualescens caput poenitentiae in ecclesia publice non subdiderit, si prohibitis uitiis non detinetur obnoxius, admittatur ad clerum"; Gerona (a. 517) c. 10 [= Toledo IV (a. 633) c. 54] clarified who were and were not eligible for clerical service by identifying

The authors of this canon were aware of the sins that occasioned the penance and insisted on what might seem obvious—that the person in question be completely free of them. Similarly, other legislation that prohibited liturgical penitents from ordination without exception sometimes grouped them together with bigamists and men who married widows. Excluding reconciled penitents from clerical office, in short, was an efficient way of excluding a whole list of nefarious sinners.⁴³ Nonetheless, the canon from Gerona unmistakably emphasized the humiliation of penance, not merely sins, as a defining event. This accorded with other legislation. Members of the first council of Toledo in 400, for example, specified that what they meant by “penitent” was “someone who after baptism does public penance in sackcloth for homicide or for various other crimes and serious sins and is reconciled to the divine altar.” A penitent of this sort could not be ordained. They went on, however, to admit even these confessed homicides into ecclesiastical service as doormen or readers.⁴⁴

So not all life was “la mort civile et sociale,” even for liturgical penitents. There were options within the constraints of penitential devotion; some respectable avenues were left open to those living “en état de pardon.” The publicity of liturgical penance was a critical determinant, and a real advantage existed in receiving ordination before one revealed commission of a crime. Deacons and priests who did penance for sins committed either before or after ordination were sometimes allowed to resume their offices according to Gallic and Spanish councils, with or without restrictions on their future responsibilities and upward mobility.⁴⁵ Bishops at the third council of Orléans in 538 even reminded themselves to pay out a reasonable stipend to clerics while they were

the nature of the sin: “Hi qui in discrimine constituti poenitentiam accipiunt nulla manifesta scelera confitentes, sed tantum peccatores se praedicantes, huiusmodi si reuauerint, possunt etiam per morum probitatem ad gradus ecclesiasticos peruenire; qui uero ita poenitentiam accipiunt, ut aliquod mortale peccatum perpetrasse publice fateantur, ad clerum uel honores ecclesiasticos peruenire nullatenus possunt, quia se confessione propria notauerunt”; Orlandis and Ramon-Lissón, *Historia de los concilios*, pp. 111–12, 283, 288.

⁴³ Nicaea (a. 325) c. 13; “Arles II” (c. 501) c. 25; Agde (a. 506) c. 43; Épaon (a. 517) c. 3. Penitents prohibited along with bigamists and men who marry widows: *Statuta Ecclesiae Antiqua*, c. 84–85; Arles IV (a. 524) c. 3; Caesarius, *Serm.* 1.14; Orléans III (a. 538) c. 6, added those physically or publicly possessed.

⁴⁴ Toledo I (a. 400) c. 2; Göller, “Spanisch-westgotische Bußwesen,” p. 246; Orlandis and Ramon-Lissón, *Historia de los concilios*, p. 85.

⁴⁵ Penance with loss of office: Elvira (a. 306) c. 76; Riez (a. 439) c. VII; Orléans II (a. 533) c. 8. Retain office with restrictions: Orléans I (a. 511) c. 12; Lérida (a. 546)

performing required penance.⁴⁶ Bishops themselves might do penance, often unwillingly, usually sequestered in a monastery, but in some cases still in control of the secular affairs of their church.⁴⁷ So long as only their colleagues and select laity witnessed their tears and contrition, apparently, all clergy could demand or be required to seek absolution through penance.⁴⁸

Penance was simply too precious to leave to the criminals or, for that matter, to the professional penitents. Eutropius, a native of Marseilles and the bishop of Orange from sometime before 463 until his death around 475, began religious life under the influence of his wife, whose spiritual devotion and premature death both affected him powerfully. Eutropius's bishop, discerning his true capacities, pressed the grieving widower to demanding ascetic extremes. Initially, despair served Eutropius in the place of spiritual ambition. Later, however, after he became a deacon, he resolved not only to fulfil his office but also to purge himself of all his past sins through zealous penance. Verus of Orange, his biographer and successor as bishop, believed that it was his contrition that earned Eutropius the distressing privilege of witnessing his own absolution:

Thus it happened one night, while deep in sleep after long nocturnal prayers, that he was assailed by a terrible vision. For he saw himself cast face up on the ground and a teeming mass of black birds stretching in a column from his genitals to the clouds. Once this stupendous situation had penetrated his dormant mind, he watched fire from the sky consume the flock of birds down to his genitals.⁴⁹

c. 5. Retain office without explicit restrictions: Orange I (a. 441) c. 4; Agde (a. 506) c. 2; Orléans I (a. 511) c. 7.

⁴⁶ Orléans III (a. 538) c. 22 (19).

⁴⁷ E.g., Marseilles (a. 533) for the case of Contumeliosus of Riez, together with de Jong, "Transformations of Penance," pp. 201–02 and 210–15, for penitent bishops in Gregory of Tours; Orléans III (a. 538) c. 2, 7: penance for bishops who wrongly ordain or readmit clergy; Orange I (a. 441) c. 4 = "Arles II" (c. 501) c. 29 (28): penance must be given to clergy who request it.

⁴⁸ Vaison (a. 442) c. 8: a bishop should *discreetly* admonish a sinful colleague to repent ("cum ipso ad compunctionem eius secretis correptionibus elaboraret"). Bishops at the council of Chalons (a. 647/653) drafted a joint letter to Theudorius of Arles after seeing a written profession of penance signed by the bishop himself. They reminded him that "qui publice penitentiam profitetur" may not occupy the episcopal throne and urged him to keep out of Church affairs until a hearing at the next synod.

⁴⁹ Verus, *Vita Eutropii* 4, Acta Sanctorum May VI (27 May), pp. 700F–701E at 701B, also ed. J. H. Albanés and U. Chevalier, *Gallia Christiana novissima*, vol. 6 (Montebéliard, 1916), pp. 10–18 at 11–12: "Accidit ergo ut quadam nocte, post orationis vigiliis, in soporem depressus, visione terribili frangeretur. Videbat namque se supinum terra

Gripped by horror, Eutropius redoubled his efforts, which served to win him another vision, now a ball of flies emanating from his chest and similarly devoured by flames. Finally, he revealed his nightmares to a pious abbot, who joyfully explained, "Do you not see, brother Eutropius, that you have earned forgiveness for not only your gloomy deeds but your innermost thoughts as well?" He was the sinner Ezekiel heralded, said his adviser, who turned from iniquity to justice and found himself absolved. Eutropius kept those visions in the front of his mind even after his reluctant ascension to the episcopate.

In the process of burning off all residue of sin in himself, Eutropius had discovered that true penance worked invisibly as much as visibly, moving of its own accord regardless of narrow, legalistic formulas that matched sinful with redemptive actions. Penance and its satisfaction were unpredictable. Verus's hero was a worthy exemplar for bishops who mediated the divide between public and private devotion. They simultaneously acted as the overseers of liturgical penitents, the counselors of professional penitents, and the pastors of the Christian majority who atoned for their sins through daily penance—through acts of charity, prayer, and contrition.

All bishops who administered penance well also did penance, preferably without humiliating themselves. For Caesarius, the bishop of Arles (502–43), penance was a tool of pastoral care like charismatic scrutiny, the spiritual sword, and the power to bind and loose sinners. So he preached to the people of Arles:

[D]early beloved, since not only slight sins but even greater offenses try to overtake us day and night, let us not reserve ourselves for a repentance which is accepted at the end of life, but as long as we live let us endeavor to do penance daily. This practice should be observed continuously, not only by the laity and clerics, but even by priests and monks. Indeed, a bishop who does penance every day can pray for me, but one who presumes upon his dignity and sanctity, refusing to do penance, will have to find someone to pray for him.⁵⁰

prostratum, et in columna a locis genitalibus nigrarum avium multitudinem conglobatam usque ad nubes extendi. Cumque tantae rei stupor etiam dormientem invaderet, vidit e caelo ignem usque genitalia sua avium multitudinem consumentem." On this text, see *Bibliotheca hagiographica latina*, 2 vols, repr. ed. (Brussels, 1949), no. 2782; and E. Dekkers, *Clavis Patrum Latinorum*, 3rd ed., CCL (1995), no. 2099 (p. 690).

⁵⁰ Caesarius, *Serm.* 61.1, CCL 103:267, trans. by M. M. Mueller, FOC 31 (1956), p. 300.

People were never healed of sins' wounds, preached Caesarius, but they never lacked the "medicine of confession" either. Although modern commentators on his sermons are at pains to distinguish this medicine from liturgical penance, Caesarius would have rejected the intrusive gloss, for it diminished a point he made often: penance balanced daily sins with daily remedies.⁵¹ Whatever sins Christians did not confess in this life, moreover, the devil would raise as charges against them in the tribunal. The part of the pastor was to urge his followers toward "lots of charity and hard, long penance," or else he would "render an evil account" for their sin and his negligence alike at the Final Judgement.⁵²

The Heroic Life of Penitents

An advocate for other sinners could not himself be living in a perpetual state of pardon, surely, but he should not be harbouring any unrepented sins himself. More importantly, an advocate must know what it means to need mercy. Although bishops might explore and even celebrate the nuances of redemption among themselves in hagiographic literature, they used less delicate, more familiar examples for general dissemination. Scripture provided examples of famous penitents, particularly the apostle Peter and King David, whose humanity was as instructive as their heroism. Peter, the apostle and first bishop of the Church, had misjudged his own spiritual capacities when he had promised not to deny Christ.⁵³ After his third denial, however, he did not make excuses or even confess but simply "went out and wept bitterly" (Lk 22:62). Fortunately for Peter, Augustine preached one Saturday after Easter, Jesus knew better.

⁵¹ Caesarius, *Serm.* 59.1, CCSL 103:259 ("quomodo enim nobis peccatorum vulnera numquam deesse possunt, sic et confessionis medicamenta deesse non debent"), with commentary at SC 330:42–43 n. 1; *ibid.* 162.4, CCSL 104:666 ("quomodo non nobis desunt cotidiana peccata, sic per paenitentiam numquam debent deesse cotidiana remedia").

⁵² Caesarius, *Serm.* 54.1, CCSL 103:235–36.

⁵³ Peter in penitential exegesis: A. Fitzgerald, *Conversion through Penance in the Italian Church of the Fourth and Fifth Centuries: New Approaches to the Experience of Conversion from Sin* (New York, 1988), pp. 99–130, 489–90; *idem*, "Christ, Peter and the Rooster," *Augustinianum* 41:2 (2001), 409–23.

In order to show Peter to himself (that is, to show Peter to Peter), the Lord turned his face from him for a time, and Peter denied him. He turned his face towards him when he “looked,” and Peter wept. He washed his guilt with tears, he poured water from his eyes and baptized his conscience....⁵⁴

Because the diseased are often delirious and the human heart is “rough country,” Augustine explained, the gift of penance depended upon a spiritual diagnosis.⁵⁵ Peter revealed how far even the saints had to go before their spiritual promises became more than presumptions.

Contrition obtained absolution, while verbosity allowed opportunity for new mistakes. Ambrose of Milan had reflected, “I do not find what [Peter] said, I find that he wept. I read of his tears, I do not read of satisfaction. But what cannot be defended can be absolved.”⁵⁶ Christ had first to look upon the sinner before self-accusation and then efficacious remorse could take place. There was no such “look” at Judas, whose verbal confession was consequentially in vain (Mt 27:4). Maximus of Turin went so far as to allow that Judas performed a viable act of penance; nevertheless, he failed to “unbind” his conscience from his crime.⁵⁷ The poet Verecundus called Peter’s contrition a “lacrymal confession,” which was penance in and of itself.⁵⁸ Commenting on the psalms, Cassiodorus observed that Jesus initially turned his face from Peter because, as the divine inquisitor, he would instantaneously destroy iniquity with his gaze.⁵⁹ Judged at that moment, with justice instead of mercy, Peter would be damned. First, the sinner had to look at his own sinful state, “Peter to Peter” [*Petrum Petro*] in Augustine’s words, in

⁵⁴ Augustine, *Serm.* 229P, C. Lambot, “Nouveaux sermons de S. Augustin, I–III «de lectione Evangelii»” *Revue bénédictine* 49 (1937), 231–78 (sermo “De amore Petri” pp. 252–56; quotation from p. 256).

⁵⁵ Augustine, *Serm.* 229O.1, *Miscellanea agostiniana*, 2 vols (Rome, 1930–31), 1:495–96.

⁵⁶ Ambrose, *Exp. evang. sec. Luc.* 10.88, ed. M. Adriaen, CCL 14 (1957), p. 371.

⁵⁷ Maximus of Turin, *Serm.* 59.1, ed. A. Mutzenbecher, CCL 23 (1962), p. 236 (“actus paenitentiae refuderit uenditionis praetium, sed conscientiae suae non resolverit scelus”); also see idem, *Serm.* 25, 61, and the series 75–77; Fitzgerald, *Conversion through Penance*, pp. 251–57; A. Merkt, *Maximus I von Turin: Die Verkündigung eines Bischofs der frühen Reichskirche im zeitgeschichtlichen, gesellschaftlichen und liturgischen Kontext*, Supplements to *Vigiliae Christianae* 40 (Leiden, 1997) pp. 204–11.

⁵⁸ Verecundus, *Super cantica* 2 (*Deut*) 21, ed. R. Demeulenaere, CCL 93 (1976), p. 36; cf. ibid. 5 (*Ez*) 1, CCL 93:117: “Ezechias, rex Iudae, filius Achaz, cum fuisset infirmitatem perpressus et mortem sibi futuram aduentare Esaiae uaticinio cognouisset, conuertit faciem suam ad parietem et fleuit amare.”

⁵⁹ Cassiodorus, *Expositio Psalmorum* 50.11, ed. M. Adriaen, CCL 97 (1958), p. 461.

order to accuse himself and hope for forgiveness. Penance worked as an antidote to human fallibility and mendacity alike.

Like Peter, the psalmist exemplified proper penance as much by his humanity as his heroism. In Jerome's tidy equation, David taught "by his virtues, how standing I might not fall; by his penance, how falling I might rise again."⁶⁰ It had taken a prophet, after all, to persuade David to repentance.⁶¹ So Augustine directed his congregation to listen closely to Psalm 50:

Nathan the prophet has not been sent to you, David has been sent to you. Hear him clamoring, and likewise clamor; hear him moaning, and moan with him; hear him weeping, and add your tears; hear he is corrected, and share in his delight.⁶²

For Cassiodorus, David revealed how sinners should expect the rewards to come in the Final Judgement and petition for their share by putting the message of the Psalms into action—that is, by striving to be good penitents.⁶³ These influential commentators on the Psalms found in David the perfect model for penance, because his words and actions together provided a unified language for "the disparate moral sentiments of the entire Christian community, sentiments that individuals, steeped in their peculiar sins, find inexpressible."⁶⁴ The seven penitential Psalms were especially instructive, none more so than Psalm 50, the *Miserere*, which worked almost miraculously to move people to introspection and contrition.⁶⁵ With the Psalms, late antique preachers tried to move

⁶⁰ Jerome, *Ep.* 77.4 ("Ad Oceanum, de morte Fabiolae," a. 400), ed. and trans. J. Labourt, *Lettres*, 8 vols (Paris 1949–63), 4:43 ("qui me prius docuerat uirtutibus suis, quomodo stans non caderem, doceret per paenitentiam, quomodo cadens resurgerem").

⁶¹ E.g., Cassiodorus, *Expositio Psalmorum* 50.3, CCSL 97:454; Gregory the Great, *Regula pastoralis* 3.2, intro. by B. Judic, ed. F. Rommel, trans. C. Morel, *Règle pastorale*, 2 vols, SC 381–82 (1992), 2:272.

⁶² Augustine, *Enarrationes in Psalmos* 50.5, ed. E. Dekkers and J. Fraipont, CCSL 38 (1956), p. 602: "Ad te Nathan propheta non est missus, ipse Dauid ad te missus est. Audi eum clamantem, et simul clama; audi gementem, et congemisce; audi flentem, et lacrimas iunge; audi correctum, et condelectare"; M. P. Kuczynski, *Prophetic Song: The Psalms as Moral Discourse in Late Medieval England*, Middle Ages Series (Philadelphia, 1995), pp. 51–56.

⁶³ Cassiodorus, *Expositio Psalmorum* 50.12, CCSL 97:462: "Sed paenitens iste bonorum audius, uenturi praemii amore succensus, quod in futuro prouenire poterat, hoc sibi concedi praesenti tempore postulabat."

⁶⁴ Kuczynski, *Prophetic Song*, p. 48.

⁶⁵ Kuczynski, *Prophetic Song*, pp. 37–38.

Christians toward penance, “by playing upon the Davidical harp with a plectrum of spiritual understanding.”⁶⁶

The Church’s collective appeal to judgement, recompense, and forgiveness was the key to liturgical penance in late antiquity, but it was no easy concept to convey. Adam was an ambivalent model in this context. He was, with Eve, the first to falter on account of his humanity, a condition he demonstrated by his reluctance to face up to his sin. Nonetheless, Adam also became a model penitent, a role he fulfilled while simultaneously monitoring the penance Eve performed as if he were her bishop—unsuccessfully, as it turned out. The apocryphal *Life of Adam and Eve* featured its two protagonists after their expulsion from Eden. In the Latin version, which reached its extant form during late antiquity, Adam stands up to his neck in the Jordan for 40 days, weeping along with the creatures thronging him like a late antique congregation, though here mostly fish. Meanwhile for Eve, doubting her endurance, Adam prescribes 37 days in the Tigris. The devil manages to trick her once again, this time into abandoning her penance and foraging for food. Surprisingly, because he never deviates from his penance, Adam lacks Peter’s presumption and takes neither his own forgiveness or his fortitude for granted. “Perhaps” [*forsitan*] is the leitmotif of the penitential chapters of the *Life*: “perhaps” there will be forgiveness.⁶⁷ Humility and contrition are thus shown to be inseparable.

Adam was presented quite differently, however, in three anonymous sermons or addresses, possibly composed by a single archdeacon at Rome during the 5th or 6th century, and intended for the part of the

⁶⁶ Peter Chrysologus, *Serm.* 115.1, CCSL 24A:699 (“Dauiticam citharam spiritalis intelligentiae plectro et modulatione tangentes”); P. F. Bradshaw, *Daily Prayer in the Early Church: A Study of the Origin and Early Development of the Divine Office*, Alcuin Club Collections 63 (London, 1981) chs 6–7; P. G. Cobb, in *Study of the Liturgy*, rev. ed. (London and New York, 1992) pp. 223, 227.

⁶⁷ W. Meyer, “Vita Adae et Evae,” *Abhandlungen der philosophisch-philologischen Classe der königlich bayerischen Akademie der Wissenschaften* 14/3 (1878), 185–250; *A Synopsis of the Books of Adam and Eve*, ed. G. A. Anderson and M. E. Stone (Atlanta, 1994); M. E. Stone, *A History of the Literature of Adam and Eve* (Atlanta, 1992), esp. pp. 53–58; *forsitan*: J. R. Levison, *Portraits of Adam in Early Judaism, from Sirach to 2 Baruch* (Sheffield, 1988), pp. 163–90 at 175. Also see B. O. Murdoch, *The Irish Adam and Eve Story from Saltair na Rann: Volume 2, Commentary* (Dublin, 1976); C. Ireland, “Penance and Prayer in Water: An Irish practice in Northumbrian hagiography,” *Cambrian Medieval Celtic Studies* 34 (1997), 51–66 at 52–53 (“a precursor of the cold shower”); R. Pettazzoni, “Confession of Sins and the Classics,” *Harvard Theological Review* 30 (1937), 1–14; E. C. Quinn, *The Penitence of Adam: A Study of the Andrius MS. (Bibliothèque Nationale Fr. 95 Folios 380r–394v)* (University, Miss., 1980), pp. 30–31.

penitential liturgy known as the *postulatio*.⁶⁸ At this point in the reconciliation ceremony, the archdeacon presented the expectant penitents, prostrate at the feet of the clergy and the standing congregation, all of them weeping and moaning together, and he pleaded on their behalf to rouse the bishop's mercy—to stir his “pastoral guts” [*pastoralia uiscera*]. The penitents had done most of the work already; fuelled by “hidden assistance” straight from God, they had hung their minds on a cerebral scaffold and tortured themselves there [*in calasta confixus excruciet*]. Now they were literally vulnerable: they stripped bare “their consciences gory with savage bites” before the bishop's own eyes [*ante tuos oculos*] and awaited his “medicinal attentiveness” [*diligentiam medicinae*].⁶⁹ These living penitents invited direct comparison with legendary penitents. However contrite his performance in the Jordan, Adam could have hoped only to compensate for his more famous and miserable showing in the Garden of Eden where, after eating the forbidden fruit, he had chosen to hide his shame rather than to make amends. The archdeacon offered up Adam as a counterexample to the ordinary Christians of his congregation. “These people are revived through a more prudent remedy,” he said, “not by excusing, but by accusing their deeds.”⁷⁰ In another address, he tested his subjects in the place of the first humans:

These are the ones, standing in church as if they were established in paradise, whom that age-old enemy begrudged... Looking back and dreading the example of the ancient condemnation, however, these [penitents] do not flee from the face of God, they do not hide themselves in the shadow of excuses [*umbraculo excusationis*], and they do not cover up

⁶⁸ Anonymous Archdeacon = *Archidiaconi Romani sermones tres de reconciliandis paenitentibus*, ed. F. Heylen, CCSL 9 (1957), pp. 351–63; E. Dekkers, *Clavis Patrum Latinorum*, 3rd ed., CCSL (1995) no. 238; F. Bussini, “L'intervention de l'assemblée des fidèles au moment de la réconciliation des pénitents, d'après les trois ‘Postulationes’ d'un archidiacre romain du V^e–VI^e siècle,” *Revue des sciences religieuses* 41 (1967), 29–38; idem, “L'intervention de l'évêque dans la réconciliation des pénitents, d'après les trois ‘postulationes’ d'un archidiacre romain de V^e–VI^e siècle,” *Revue des sciences religieuses* 42 (1968), 326–38; Adnès, “Pénitence,” 962–3.

⁶⁹ Anonymous Archdeacon, *Serm.* 1.1 and 4–5, CCSL 9:355–6 (“ostendentes tibi uulnera sua, et ferinis morsibus cruentas conscientias renudantes”); cf. Ruricius, *Ep.* 1.32 (c. 502/506), MGH AA 8:335, *Ruricius of Limoges and Friends*, p. 191 (my italics): “[N]ec simus quasi timentes deum, aliud sermonibus praetendentes, aliud habentes in moribus, aliud ostendentes in vestibus, aliud actibus comprobantes, ne nos mordeat sermo ille dominicus, sub vestitu ovium luporum rabiem contegentes...”

⁷⁰ Anonymous Archdeacon, *Serm.* 2.9, CCSL 9:359.

their shameful actions with hollow verbal defenses, like a fruitless wrap of leaves....⁷¹

The penitents engaged sin like a criminal charge, temptation like an accuser, and the bishop like a judge. "They lay what they have done out in the open with their fruitful tears. By themselves finding fault with their own crimes, through anticipation and not denial, they overcome that enemy who would have accused them."⁷²

In the ceremony of reconciliation, bishops probed the hearts of the penitents to judge their sincerity. For their part, penitents' behaviour demonstrated whether they had confronted their own iniquities. Above all, the performance revealed that the penitents' submission to judgment, punishment, and divine mercy was voluntary and wholehearted.⁷³ Once they came through this process successfully, the penitents became heroes as valiant as the martyrs and saints and worthy of emulation. Up until the time when emotions spilled over in the ceremony of reconciliation, however, penance was mostly an invisible process, "an inner song, a slight murmur, a silent word."⁷⁴ Poised on the edge of late antiquity and the early Middle Ages, Gregory the Great, the "father of compunction," would explain how souls passed from shame, through punishment and the temptation to relent or relapse, and finally to a true longing for eternal salvation. The moment of turning away from sin was marked by a sharp, painful prick as of a thorn [*spina*], and Latin authors generally termed the process compunction [*compunctio*].⁷⁵ Echoing a Stoic distinction between ostentatious lament and genuine grief, Gregory described how shame and suffering produced fearful tears while desire for God produced joyful tears. Compunction was more

⁷¹ Anonymous Archdeacon, *Serm.* 1.6, CCSL 9:356: "Hi sunt quibus in ecclesia stantibus tamquam in paradiso constitutis uetustus ille inimicus inuidit.... Sed et hi tandem respicientes et reformidantes antiquae damnationis exemplum non a facie dei refugiant, non se umbraculo excusationis occultant, non inani defensione uerborum tamquam infructuoso uelamento foliorum contegunt pudenda commissa...."

⁷² Anonymous Archdeacon, *Serm.* 2.10, CCSL 9:359: "Neque enim fugiunt deum, nec sterilibus uerbis tamquam siluis operiunt, sed fructuosis lacrimis aperiunt quod fecerunt, obicientes sibi ipsi crimina sua criminaturum inimicum praeueniendo superant, non negando."

⁷³ Gaudemet, *L'Église dans l'empire romain*, p. 669: "La pénitence exige donc une manifestation de volonté. Mais le muet pourrait d'une façon quelconque faire connaître cette volonté."

⁷⁴ J. Leclercq, *The Love of Learning and the Desire for God: A Study of Monastic Culture*, trans. by C. Misrahi, 3rd ed. (New York, 1982), pp. 37–39.

⁷⁵ J. Pegon, "Componction," in *Dictionnaire de spiritualité* 2 (1937), cols 1312–21; cf. Ps 31:4.

than a momentary disposition; it was a sort of *machina ad Deum*, which might lift the penitent's soul up toward divine mercy.⁷⁶

A Community of Penitents

The father of compunction was a late antique pastor, whose theology moved easily across boundaries between philosophical and pastoral activity, and between religious and secular life. Agiulf, a deacon in the church of Saint Martin at Tours who was in Rome collecting relics in 590, also brought back news of a magnificent display of penitential devotion. The Tiber had flooded the previous November, churches had collapsed, and grain rotted in church storehouses, water-snakes lay putrefying on the shores, and plague threatened the inhabitants of the city. Their bishop was stricken and died early on. Now his successor, Gregory the Great, asked the people to take refuge in penance while time yet remained, to search out their own faults and punish them with tears. This was no call for leisurely introspection: Gregory demanded that his congregation summon their sins from hidden depths and look at them directly [*ante oculos mentis*]. Like a classical orator evoking the destruction of a great city, Gregory strove to collapse time and distance and to generate a sense of immediacy. While poets and pastors alike might reach for an emotional reaction from their audiences, Gregory aimed still deeper to elicit physical evidence that penance was working to win forgiveness. All the clergy, monks, children, widows, laymen and women together processed around the churches singing psalms, even while 80 participants dropped dead to the ground. Finally, however, the plague ended and God's mercy seemed won.⁷⁷ We well might read the history of rogation ceremonies running through the historical books of Gregory of Tours as the escalation of penitential devotion, itself

⁷⁶ E.g., Gregory I, *Moralia in Iob* 1.47 bis ("mens per quamdam compunctionis machinam ad alta sustollitur"); P. Courcelle, *Connais-toi toi-même, de Socrate à Saint Bernard*, 3 vols (Paris, 1974–75), p. 215; M. Wilson, "The Subjugation of Grief in Seneca's 'Epistles'," in *The Passions in Roman Thought and Literature*, ed. S. M. Braund and C. Gill (Cambridge, 1997), pp. 48–67 at 52, 60; Brown, *Rise of Western Christendom*, p. 256; cf. T. O'Loughlin and H. Conrad-O'Briain, "The 'Baptism of Tears' in Early Anglo-Saxon Sources," *Anglo-Saxon England* 22 (1993), 65–83 at 73–74.

⁷⁷ Gregory of Tours, *LH* 10.1, MGH SRM 1.1:477–81; R. Webb, "Imagination and the Arousal of the Emotions," in *Passions in Roman Thought and Literature*, ed. Braund and Gill, pp. 112–27 at 117–21.

a reflection of pastoral excellence, a penitential progression of which Gregory the Great was the apogee.⁷⁸

Like the prophets and Jesus Christ, bishops were “preachers of penance” first and foremost.⁷⁹ Gregory of Tours’ uncle, Nicetius of Lyon, was a model pastor, forgiving the penitent and chastising the delinquent.⁸⁰ Hilary of Arles (bishop 430–49) had been one of a number of monks from Lérins to bring professional devotion to bear upon their pastoral responsibilities as bishops. Whenever Hilary of Arles preached penance, all sorts of people flooded the church. He terrified them with the prospect of shadowy flames [*tenebrosum incendium*] and the Final Judgement. They responded with tears and groans. He forced them to look directly upon their own “wounds” [*vulnera conscientiae ante oculos inspicienda*], before he added his own tears in supplication and confirmed the “fruit of penance” with his prayers.⁸¹ Unlike the mere restoration of church discipline—when excommunicates “rush back to peace”—penitents strove for a more elusive peace, one which Christians enjoyed only after death, when finally they “will have no enemy.”⁸²

This brings us into contact with the most important recent work for understanding late antique penance, studies that have focused on exit strategies and end games—how Christians died a good death, and what sort of hearing they expected in the afterlife. Penance ultimately oriented minds and hearts toward the Final Judgement. Pious Christians and successful penitents expected forgiveness, but certainty came only on their day of judgement.⁸³ Meanwhile, among the living, pastors shaped mundane attitudes toward penance around two fundamental truths. On one side was human fallibility, which accounted for not only why

⁷⁸ G. Nathan, “The Rogation Ceremonies of Late Antique Gaul: Creation, Transmission and the Role of the Bishop,” *Classica et Mediaevalia* 40 (1998), 275–303.

⁷⁹ Gregory of Tours, *LH* 6.5, MGH SRM 1.1:248–49 (“ipsos praedicatores paenitentiae”) and 1.20, MGH SRM 1.1:43 (“Domino autem Deo nostro Iesu Christo paenitentiam praedicante”).

⁸⁰ Gregory of Tours, *LH* 4.36, MGH SRM 1.1:168 (“castigator delinquentium poenitentiumque remissor”).

⁸¹ Honoratus, *Life of Hilary of Arles* 16, ed. P. Jacob, SC 404 (Paris 1995), pp. 126–28; Brown, *Rise of Western Christendom*, pp. 111–13.

⁸² Augustine, *Serm.* 77A.3, *Miscellanea agostiniana* 1:578.

⁸³ Rebillard, *In hora mortis*; P. Brown, “Vers la naissance du Purgatoire: Amnistie et pénitence dans le christianisme occidental de l’Antiquité tardive au Haut Moyen Âge,” *Annales—Histoire, Sciences Sociales* 52 (1997), 1247–61; idem, “The Decline of the Empire of God: Amnesty, Penance, and the Afterlife from Late Antiquity to the Middle Ages,” in *Last Things: Death and the Apocalypse in the Middle Ages*, ed. C. W. Bynum and P. Freedman (Philadelphia, 2000), pp. 41–59.

people sinned but also why penance needed to be a daily devotion, a disposition, a “frame of mind.”⁸⁴ On the other side, divine mercy was at work. Prudent Christians invoked mercy now, not waiting to face the unerring accuracy of divine justice, which would make no allowance for weakness or for people who misjudged their own capacities.

It is not that there were no meaningful differences between liturgical, professional, and daily penance, between public demonstrations of humility and private acts of devotion, or between crimes such as homicide and light sins such as profanity.⁸⁵ Rather, we find an extension of penance beyond the ordinary limits of juridical administration and pastoral care. Pastors used biblical and hagiographic models of penance, such as Adam’s mixed performance in Genesis and Peter’s immoderate self-confidence in the passion narrative, to create a community of penitents more inclusive than the living subjects of liturgical penance alone. The performance of penance contributed to the fluidity of boundaries among lay, religious, and clerical spirituality. Late antique bishops cast penance in a vista so broad that its challenges and pitfalls, while foreboding, became wholly natural contours in a vaster landscape of sin and redemption.⁸⁶ In the end, although we can assess the contributions and responses of bishops as administrators and pastors, we can only imagine how ordinary Christians responded to this prospect, and we can only guess whether it might have fired or cooled their penitential zeal.⁸⁷

⁸⁴ Brown, *Rise of Western Christendom*, p. 256.

⁸⁵ Recent scholarship tends to question boundaries in early medieval penance as well, e.g., R. Meens, “The Frequency and Nature of Early Medieval Penance,” in *Handling Sin: Confession in the Middle Ages*, ed. P. Biller and A. J. Minnis (York, 1998), pp. 35–61 at 54, on later penance (“a mixture of public and private acts”). T. Tentler reacts against such arguments for ambiguity, especially between public and private, in his review of S. Hamilton, *The Practice of Penance 900–1050* (Woodbridge, 2001), in *The Medieval Review* 02.07.19 (2002).

⁸⁶ Brown, *Rise of Western Christendom*, p. 261.

⁸⁷ I thank Peter Brown, Abigail Firey, Robert Ingram, and Christopher MacEvitt for providing helpful insights and corrections to this essay. Remaining errors are my own.

SPIRITUAL GUARANTORS AT PENANCE, BAPTISM, AND ORDINATION IN THE LATE ANTIQUE EAST

Claudia Rapp

Penance, understood in the widest and most general sense, is the process by which a person restores communion with God.¹ In Latin, this process is called *poenitentia*, a word that refers to acts of repentance by individuals that they either choose to undertake at their own volition or that are suggested or indeed imposed by a person in a position of spiritual authority. Unlike most words in Christian Latin, *poenitentia* is not a loanword from the Greek. Instead, its etymology derives from *poena*, “punishment, pain.” Eastern Christianity, by contrast, gives more subtle shadings to the concept of penance, distinguishing between *metanoia*, concrete repentance for specific and individual transgressions, and *penthos*, a general state of repentance for one’s sinful nature that is often associated with the monastic state.² It is an intriguing fluke of linguistic incongruity that Latin Christianity developed a more elaborate notion of original sin than the East, yet lacks a term analogous to *penthos*.

Penance in the late antique East and early Byzantium has many ramifications with respect to the concept of sinful deeds, the possibilities for their atonement, and the identity of those who can assist in, facilitate, or even guarantee the lightening of the burden of sins. These issues generally concern lay communities and their bishops and priests as administrators of the penitential process. At the same time, there is the notion of personal spiritual progress to subdue and overcome one’s sinful nature, and there is the related issue of the identity of the spiritual guide who lends a helping hand in the individual’s progression. Such notions are especially prevalent in monastic contexts.

¹ I am grateful to Daniel Caner, Kathryn Morgan, Mark Morozovich, and Chris Wickham for reading and commenting on an earlier draft of this article, and to Heike Behlmer and Bernhard Stolte for their advice in Coptic and legal matters, respectively. They should not be held responsible, however, for the argument that follows.

² E. Ch. Suttner, “Busse. Busse im Christlichen Osten,” *Lexikon des Mittelalters*, vol. 2 (Munich and Zurich, 1983), cols 1125–1130; I. Hausherr, *Penthos: The Doctrine of Compunction in the Christian East* (Kalamazoo, 1982; first published in French, Rome, 1944).

The present study focuses on one particular conception of penance and its ramifications: the idea of a personal relationship to God that is severed through sinful deeds but can be renewed with the assistance of others. The examples under consideration here are part of a larger Christian understanding of penance as an individual process of redemption that does not necessarily involve the institutional Church or require the ritual assistance of a priest or bishop. The penitent sinner does, however, depend on the participation of others. This process can be further elucidated by comparison with other instances of personal commitment to God that join a person in a sacramental bond to the body of Christ in the Church or in a dedicated community: baptism, entry into the clergy, and monastic profession. On all these occasions, another person can act as an assistant and sponsor. As will be seen, Greek authors of the 3rd to 7th centuries take recourse to legal and financial language to conceptualize this reconciliation and to explain the role of the assistant.

Penance and Reconciliation in Late Antiquity and Early Byzantium

The core of penance in Late Antiquity and early Byzantium was the need for reconciliation with God after individuals had alienated themselves by breaking their baptismal vows. This reconciliation could be accomplished in different ways, through personal deeds of penance or through the intervention and prayers of others. Especially urgent was the need for repentance for the three sins “against the spirit”: murder, adultery, and apostasy. In the course of the persecutions of Christians of the 3rd century, the reconciliation of the *lapsi* who had denied their faith under pressure but then repented became a particular concern. During the Decian Persecution in Carthage, imprisoned martyrs awaiting their execution offered up prayers on behalf of the *lapsi* and even assured them of forgiveness—thereby implicitly presenting a challenge to the power to bind and loose that was invested in the bishop, as the letters of Cyprian attest.³ In Alexandria, under bishop Dionysius, the

³ For an exhaustive overview of the sources, see O. D. Watkins, *A History of Penance*, 2 vols (London, etc., 1920). The sources up to the 3rd century are assembled by H. Karpp, *Die Busse: Quellen zur Entstehung des altkirchlichen Busswesens* (Zurich, 1969), and discussed, from a Catholic viewpoint, by M. J. O'Donnell, *Penance in the Early Church* (Dublin, 1907). The question of the power to bind and loose and whether it

situation was similar. There, the imprisoned martyrs who were already experiencing God's forgiveness because of their ordeal extended their generosity and compassion to those who had lapsed. "They accepted them, let them in and allowed them to join the congregation as 'bystanders' [a reference to *systasis*, the final level of penance], and permitted them to be part of the community at prayers and meals."⁴ Bishop Dionysius professed to be uncertain how to reconcile his own authority with the martyr's intervention.

The first penitential canons in the East were developed in this context. Church councils as well as individual bishops of the 3rd and 4th centuries addressed the degrees and length of exclusion from the Eucharist for apostasy and other, less ponderous sins. The pedagogical and corrective effect of this temporary exclusion could be further enhanced through additional penitential practices, such as fasting, almsgiving, and vigils. The final reconciliation with the Church was signalled in a public ritual through the imposition of hands by the bishop and the communal prayers of the faithful. Although the custom of public penance and reconciliation through the bishop or priest seems to have fallen into disuse among the laity after the 5th century, when Christian communities expanded and became fragmented, the writings of this period were adapted to form the basis of the oldest preserved Greek penitential, the so-called *protokanonarion*, which probably was composed in the second half of the 9th or the 10th century.⁵ It specifies the acts of repentance or punishment (ἐπιτιμῖαι) required for various misdeeds, in a system resembling the "tariff penance" of the West. At this later stage, the repentant sinner made private confession to a spiritual father, usually a monk, who assisted him with his

is held by men with charismatic gifts or by the clergy—an essentially Protestant line of inquiry—informs the works by K. Holl, *Enthusiasmus und Bussgewalt beim griechischen Mönchtum. Eine Studie zu Symeon dem neuen Theologen* (Leipzig, 1898; repr. Hildesheim, 1969), and H. v. Campenhausen, *Kirchliches Amt und geistliche Vollmacht in den ersten drei Jahrhunderten* (Tübingen, 1953; English translation: *Ecclesiastical Authority and Spiritual Power in the Church of the First Three Centuries*, London, 1969).

⁴ Eusebius, *Historia ecclesiastica* VI 42. 5, ed. E. Schwartz, Th. Mommsen, F. Winkelmann, Eusebius Werke II 2, Die Griechischen Christlichen Schriftsteller [hereafter GCS], Neue Folge 6, 2 (Berlin, 1999), p. 612, lines 4–6. Cf. n. 13: εἰσεδέξαντο καὶ συνήγαγον καὶ συνέστησαν καὶ προσευχῶν αὐτοῖς καὶ ἐστιάσεων ἐκοινώνησαν. Translation mine.

⁵ E. Herman, "Il più antico penitenziale greco," *Orientalia Christiana Periodica* 19 (1953), 71–127. Edition and Latin translation of the text by M. Arranz, *I penitenziali bizantini*, Kanonika 3 (Rome, 1993). See also A. S[chminck], "Penitential," *Oxford Dictionary of Byzantium*, vol. 3 (New York and Oxford, 1991), p. 1624.

prayers, while the final reconciliation with the Church was achieved through bishops and priests.⁶ This separation of the two complementary acts of confession and reconciliation is still practised in the Orthodox Church today. Paul Meyendorff, the son of the scholar of Byzantine theology John Meyendorff, reminisces about his childhood in France: “I remember . . . going to confession before the abbe of a convent—after confessing my sins and being suitably counseled, I would go into the church to receive absolution from the priest.”⁷

The martyrs’ ability to facilitate the reconciliation of sinners, so forcefully asserted by the imprisoned Christians in Carthage and Alexandria, is indicative of the importance accorded to the personal virtue of the person hearing confession. This notion is pervasive in Eastern Christianity. The penitent sinner expected that the one whom he approached for spiritual assistance by confessing his sin could also broker his reconciliation. That person should have the ability for supreme and true compassion, in imitation of Paul: “Who is weak, and I am not weak? Who is made to stumble, and I am not indignant?” (2 Cor 11:29). Origen explains that one should be careful in the choice of person to hear one’s confession. Such a one should be able to suffer with the suffering and shed tears with the crying, “qui condolendi et compatiendi noverit disciplinam.”⁸ Consequently, Origen says, the priests of the Church should have reached such a degree of personal perfection and advanced knowledge in their priestly office that, although blameless themselves, they are capable of absorbing the sins of others.⁹

Accordingly, the bishop (or the priest acting on behalf of the bishop) who presided over the ritual readmission of the penitent did not merely act on the basis of the power to bind and loose that, as a successor to the apostle Peter, he received at ordination. He was also expected to have the personal qualities that enabled him to act as a spiritual guide for others, especially during the corrective and educational process of

⁶ For editions of the relevant prayers, with French translation, see M. Arranz, “Les prières pénitentielles de la tradition Byzantine,” *Orientalia Christiana Periodica* 57 (1991), 87–143, and 58 (1992), 23–82, with summary on 78–82; and M. Arranz, “Les formulaires de confession dans la tradition byzantine,” *Orientalia Christiana Periodica* 58 (1992), 423–59, and 59 (1993), 63–89.

⁷ P. Meyendorff, “Penance in the Orthodox Church Today,” *Studia liturgica* 18 (1988), 108–11, at 110.

⁸ Origen, *Hom. II in Ps. 37*, *Patrologia Graeca*, ed. J.-P. Migne [hereafter PG] 12:1386B.

⁹ Origen, *In Leviticum hom.* V 3, ed. W. A. Bachrens, *Origenes Werke*, vol. 6, GCS 26 (Leipzig, 1920), p. 339, lines 11–17.

penance. In the *Apostolic Constitutions*, a depository of regulations for the administration of the Church from late 4th-century Syria, the bishop's power to bind and loose is the core around which the admonitions to the episcopate revolve. They emphasize the need to judge, to dispense advice, and to administer penance for the sake of the individual sinner and the entire community. But they also make abundantly clear what this power and obligation requires of the bishop: exemplary conduct in his own affairs and a gentle and generous disposition towards those who have fallen and seek readmission. The personal investment of the bishop in the restoration of sinners should have no bounds: "If it is possible, the bishop should make the offense his own, and should say to the sinner: 'just turn around, and I will bear death in your place, like the Lord has done for me and everyone'."¹⁰ The bishop's role in the reconciliation of sinners is here understood as sharing the burdens of the sins of others in a sublime act of *imitatio Christi*. After all, as John Chrysostom explained, Christ had been the ultimate assistant, sponsor, and guarantor in relieving the sins of mankind: "He who was born from the holy virgin Mary, took upon himself [ἀναδεχόμενος] the burden of sin through repentance."¹¹

The Church historian Sozomen, writing around 450 or shortly thereafter in the eastern capital, devotes an entire chapter to the history of penitential practices in Constantinople. The original system of public confession of a sinner's misdeeds before a crowd of fellow-churchgoers had a theatre-like quality to it, Sozomen reports, and had therefore been replaced by private confession before a specifically appointed priest. This office of the penitential priest was abolished by bishop Nectarius in 391, according to Sozomen,¹² after a woman of high social status who had been instructed by the penitential priest to fast and pray in the church, had been raped by a deacon.¹³

¹⁰ *Apostolic Constitutions* II 20. 6, ed. F. X. Funk, *Didascalia et Constitutiones Apostolorum*, 2 vols (Paderborn, 1905), p. 75: εἰ οἶόν τε οὖν, ἰδιοποιεῖσθω ὁ ἐπίσκοπος τὸ πλημὲλημα, καὶ λεγέτω τῷ ἡμαρτηκότῃ, ὅτι σὺ μόνον ἐπίστρεψον, κἀγὼ τὸν ὑπὲρ σὺ θάνατον ἀναδέξομαι, ὥς ὁ κύριος τὸν ὑπὲρ ἐμοῦ καὶ πάντων. My translation. The Greek verb ἀναδέξομαι [I will bear] resonates with the designation of the baptismal sponsor as *anadochos*, which will concern us below.

¹¹ John Chrysostom, *De paenitentia*, Sermo 3, PG 60:705.

¹² For evidence for the continuation of public confession in Byzantium after the year 391, see R. J. Barringer, *Ecclesiastical Penance in the Church of Constantinople: A Study of the Hagiographical Evidence to 983 A.D.* (D.Phil., Oxford University, 1979).

¹³ Sozomen, *Historia ecclesiastica* VII 16. 1–3, and 8–9 ed. J. Bidez, G. Ch. Hansen, GCS 50 (Berlin, 1960), p. 322, line 17–p. 323, line 3 and p. 323, line 18–p. 324, line 4.

Important for our present purposes is Sozomen's insistence on the personal qualities of the penitential priest. There is no mention of the authority of office or position. Instead, it is the priest's ability to act as an example and spiritual guide that make him suitable for this role. The notion of personal involvement of the cleric—in this case the bishop—in the lifting of penance is present also in Sozomen's subsequent description of public ritual penance in the church in Rome: after the completion of the liturgy, those in a state of repentance throw themselves prostrate on the ground with sighs and laments. Then the bishop walks towards them, with tears in his eyes, and also falls to the ground. All the congregation is then filled with lamenting and tears. Finally, the bishop rises, lifts up the penitents from the ground, and after saying the appropriate prayers for the penitents, dismisses them.¹⁴ This is, of course, the description of a ritualized procedure. But it is significant that this ritual retains the crucial element of an additional party, in this case the bishop, sharing in the abject humiliation of the penitents in order to lift them up again and restore them as full members of the community. This notion of sharing the burdens of others' sins will concern us again below.

The question of the readmission of Christians who had betrayed their faith, which first emerged in the context of the Christian persecutions, continued to be an issue in the 4th century. Basil of Caesarea wrote a series of letters to Amphilochius of Iconium in which he set out the procedure for the reconciliation of repentant heretics and other sinners. He defines four levels of penance, known in German as "Bußstufen": *πρόσκλαυσις* [weeping], *ἀκρόασις* [listening], *ὑπόπτωσις* [falling down], and *σύστασις* [standing together].¹⁵ These four levels of penance represent a gradual progression from total exclusion to full inclusion, in both a spatial and a social sense. This is explained more fully in Gregory the Wonder-Worker's *Canonical Letter*. Although the canon in question, Canon 11, is probably of a later date, it illustrates

The earlier version of this story is preserved by Socrates, *Historia ecclesiastica* V 19, ed. G. Ch. Hansen, GCS, Neue Folge 1 (Berlin, 1995), p. 293, lines 4–30, where the lady makes public confession of her sins, including the misstep with the deacon, which creates a public uproar and thus leads to the abandonment of the office of the public penitential priest. See E. Schwartz, *Bussstufen und Katechumenatsklassen* (Strasbourg, 1911), pp. 55–57.

¹⁴ Sozomen, *Historia ecclesiastica* VII 16, 4–7.

¹⁵ Basil of Caesarea, *Letter* 199, ed. Y. Courtonne, Collection des universités de France, vol. 2 (Paris, 1961), p. 158; *Letter* 217, ed. Courtonne, pp. 208–17.

well the 4th-century practices: At the first level, the sinner is outside the church, shedding tears and weeping. Next, he is allowed to stand apart from the congregation inside the doors to the atrium, to hear the readings and the sermon, but he must leave before the prayers. At the third level, the sinner stands just inside the entrance to the church, falls down to receive the prayers of the congregation and the blessing of the bishop, but again leaves, together with the catechumens, before the celebration of the mysteries. At the fourth level, the sinner joins the congregation and stands together with them in the church during the readings and congregational prayers.¹⁶ Finally, the sinner's full readmission is sealed and confirmed by participation in the Eucharist.¹⁷ This graduated approach to a full return to the community through penitence mirrors the stages of initiation through baptism, where individuals advance through three steps (with omission of the *prosklaüsis*) as ἀκροούμενοι [listening], κατηχούμενοι [receiving instruction], and φωτιζόμενοι [receiving illumination].¹⁸

Baptismal Sponsors

The penitential procedure in the late antique East bears strong resonances of baptism, as both culminate in full (re-)admission into the community of the faithful after a phase of preparation. Penance is often described as a “second baptism,” a renewal of the original initiation into the Church.¹⁹ The tears of the sincerely repentant are like

¹⁶ This is the level of readmission promised by the Alexandrian martyrs to those who approached them. See n. 4 above.

¹⁷ Gregory Thaumaturgus, *Epistula canonica*, canon 11, PG 10:1048 A–B. There is no positive evidence for the application of these regulations in Constantinople. Some authors omit the first stage of *prosklaüsis*, or the last one of *sustasis*. Early Church councils and synods also specify only three levels of exclusion: Ancyra (314), can. 6, 9, 16, 24, ed. P. P. Ioannou, *Fonti IX: Discipline générale antique*, vol. I/2 (Grottaferrata, 1962), pp. 61–62, 63–64, 67–68, 72; Nicaea (325), canon 11, ed. Ioannou, *Fonti IX: Discipline générale antique*, vol. 1/1 (Grottaferrata, 1962), pp. 32–33. For a full discussion of the evidence, see Schwartz, *Bußstufen*, pp. 24–29, 44–49.

¹⁸ Latin Christianity does not make a distinction between “hearers” and “catechumens”; it knows only the latter. See Schwartz, *Bußstufen*, p. 50.

¹⁹ B. Poschmann, *Paenitentia secunda: Die kirchliche Busse im ältesten Christentum bis Cyprian und Origenes* (Bonn, 1940; repr. Meisenheim/Glan 1964), p. 188 (Hermas); p. 290 (Ter-tullian); p. 478 (*Didaskalia*).

a second baptismal cleansing, according to Clement of Alexandria.²⁰ John Cassian in the early 5th century mentions baptism as well as martyrdom and penance as effective in blotting out sins: “For after that grace of baptism which is common to all, and that most precious gift of martyrdom which is gained by being washed in blood, there are many fruits of penitence by which we can succeed in expiating our sins.”²¹ John Climacus in the early 7th century declares: “Repentance is the renewal of baptism and is a *contract* with God for a fresh start in life [emphasis mine].”²²

Contractual language is especially prevalent in the interpretation of the rite of exorcism that precedes the cleansing of all sin in the baptismal waters. During this ritual, the baptizand solemnly forswears Satan three times and declares instead his or her adherence to Father, Son, and Holy Spirit. In the interpretation of the church fathers, especially John Chrysostom, this is not merely the breaking of “bonds” or “fetters” but also the termination of a legal agreement [συνθήκη] of servitude to the devil and his works which humans have inherited. In its stead, the baptizand makes a free and solemn commitment to recognize God as his or her master, which is again conceptualized in legal terms, as a contract.²³

Like penance, baptism requires the involvement of others. As long as adult baptism was the norm, until the 5th century at least (the latest notices of routine adult baptisms in the Mediterranean date from the 7th century), the catechumen had a sponsor who prepared him or her for baptism and played a supporting role in the baptismal ritual itself.²⁴

²⁰ Clement of Alexandria, *Quis dives salvetur* 42. 14, ed. O. Stählin, L. Früchtel, and U. Treu, *Clemens Alexandrinus*, vol. 3, GCS 17 (Berlin, 1970), p. 190, line 11. Similarly Asterius of Amasea, *Homily* 13, ch. 5.4, *Homilies I–XIV. Text, Introduction, Notes*, ed. C. Datema (Leiden, 1970), p. 186: δεῦτερος ἔλεος... ἰσοδυναμεῖ τῷ λούτρῳ.

²¹ John Cassian, *Conferences* XX 8, ed. E. Pichery, *Sources chrétiennes* [hereafter SC] 64 (Paris, 1959), p. 64; trans. from the Nicene and Post-Nicene Fathers series, online at <http://www.newadvent.org/fathers/350820.htm>. On the parallels between baptism and the readmission of penitents, see also M. Dujarier, *Le parrainage des adultes aux trois premiers siècles de l'Église. Recherche historique sur l'évolution des garanties et des étapes catéchuménales avant 313* (Paris, 1962), pp. 241–90.

²² John Climacus, *Ladder of Divine Ascent*, Step 5, PG 88:764B: Μετάνοια ἐστὶ συνθήκη πρὸς Θεὸν δευτέρου βίου; trans. C. Luibheid and N. Russell (New York, 1982), p. 121.

²³ H. M. Riley, *Christian Initiation. A Comparative Study of the Interpretation of the Baptismal Liturgy in the Mystagogical Writings of Cyril of Jerusalem, John Chrysostom, Theodore of Mopsuestia and Ambrose of Milan*, The Catholic University of America Studies in Christian Antiquity 17 (Washington, D.C., 1974), pp. 84–101.

²⁴ An excellent treatment is Dujarier, *Le parrainage des adultes*.

The process by which adult members were admitted into the Church is best documented for the Greek East in the 4th and 5th centuries. The most detailed sources are the catechetical homilies of John Chrysostom, Theodoret of Cyrrhus, Theodore of Mopsuestia, and Cyril of Jerusalem, and the description of the Easter liturgy in Jerusalem given in Egeria's account of her pilgrimage, written in Latin.²⁵ Combined with other texts, they yield the following composite picture: A man or woman who desired baptism sought out a member of the Christian community in good standing and of the same gender who would act as his or her sponsor. The sponsor at the baptism of an adult was thus the precursor of the later godfather at infant baptism. The process leading to baptism began with entering the name of the future Christian into the church records, along with that of the sponsor. The sponsor had to guarantee the worthiness of his or her charge, and was thus often called ἐγγυέτης, "guarantor."²⁶ He or she was also responsible for keeping an eye on the conduct of this person and for providing basic spiritual and moral guidance. It was possible to remain in this pre-baptismal state for a long time, even for several years in anticipation of deathbed (or "clinical") baptism. The postponement of baptism was a convenient choice because baptism was considered a life-changing event that signalled a serious commitment to lead a Christian life. Sins committed by baptized Christians who were in the receipt of God's grace therefore weighed much more heavily than pre-baptismal transgressions and required atonement through penance.

Baptisms, the ritual re-enactment of Christ's death and resurrection, were performed in the late antique East predominantly during the liturgy of the night before Easter Sunday. The catechumens prepared for their baptism during the entire period of Lent, receiving formal and detailed instruction in the Christian faith by their bishop on a regular basis, concluding with meetings every day of Holy Week. The admission of the catechumens to this final period of preparation required

²⁵ *Peregrinatio Egeriae* 45–47, ed. and trans. P. Maraval, SC 296 (Paris, 1982), pp. 304–16. For a recent study of the liturgical history, see M. Morozowich, *Holy Thursday in the Jerusalem and Constantinopolitan Traditions. The Liturgical Celebrations from the Fourth to the Fourteenth Centuries* (Ph.D. diss., Pontificio Istituto Orientale [Rome], 2002). I am grateful to Rev. Morozowich for sharing this aspect of his work with me.

²⁶ F. Dölger, "Das Garantiewerk der Bekehrung als Bedingung und Sicherung bei der Annahme zur Taufe," *Antike und Christentum* 3 (Münster, 1932), gives many anecdotal examples for pre-baptismal guarantees.

the solemn declaration of their sponsors that they had proven worthy by leading a Christian life.

The ritual of baptism itself was the conclusion of a long preparatory phase in this process of Christian initiation, during which the sponsor played an important role as a guide and guardian. But did the sponsor carry further responsibilities beyond this point? Late antique authors present different answers to this question, resulting in disagreement among modern scholars. Theodore of Mopsuestia, for example, insists that the godfather “does not make himself responsible for them [the catechumens] in connection with future sins, as each one of us answers for his own sins before God.”²⁷ Other authors, however, seem to assume that the sponsor’s role did not end with the act of baptism. He or she continued to hold a special responsibility for the neophyte’s proper Christian conduct to the extent that the sponsor was even held personally accountable for any subsequent transgressions on the part of his or her charge. This notion of a continued responsibility of the baptismal sponsor and later of the godparent is underlined by the increasingly common social practice of selecting a relative for this role—thus reinforcing an existing and enduring tie of familial obligation with a spiritual bond.²⁸

The key to this specific understanding of continued obligations comes from the legal and financial terminology found in baptismal sermons and other relevant texts. John Chrysostom in his *Catechesis II*, addressed to baptismal sponsors, coins for them the term *anadechomenos* (he later also uses *anadochos*). The preacher reminds the sponsors of their personal responsibility “so that they, too, may know what kinds of rewards they shall receive, if they continuously show great care on your behalf, and what kind of condemnation is the consequence of their neglect.”²⁹

The term *anadechomenos* is not, as might be surmised, a reference to the act of “receiving” or “picking up” the baptizand from the baptismal

²⁷ *Commentary of Theodore of Mopsuestia on the Lord’s Prayer and on the Sacraments of Baptism and the Eucharist*, trans. A. Mingana, Woodbrooke Studies, vol. 6 (Cambridge, 1933), *On Baptism*, ch. 2, p. 25. R. F. G. Burnish, “The Role of the Godfather in the East in the Fourth Century,” *Studia Patristica XVIII/2*, ed. E. A. Livingstone (Oxford, 1982), pp. 558–64, argues that the sponsors had no post-baptismal obligations.

²⁸ On godparenthood in the Greek East, see R. J. Macrides, “The Byzantine Godfather,” *Byzantine and Modern Greek Studies* 11 (1987), 139–62, reprinted in her *Kinship and Justice in Byzantium, 11th–15th Centuries* (Aldershot, 1999).

²⁹ John Chrysostom, *Catechesis II* 5, ed. A. Wenger, *Huit catéchèses baptismales*, SC 50 (Paris, 1957), p. 141.

font but, as Wenger's commentary points out, a term for guarantorship or sponsorship borrowed from financial and legal language, which soon becomes the common designation specifically for "baptismal sponsor."³⁰ The original meaning of *anadochos* or *anadechomenos* is "someone who stands surety." The other technical term, more common in legal contexts, is ἐγγυέτης [*egguetes*]. In Latin—still at that time the official language for matters of the law even in the East—the corresponding term is *fideiussor*, which likewise has its origin as a legal term³¹ but soon acquires the same specific Christian meaning of "baptismal sponsor" or "godfather" as the Greek. The legal concept behind the terms *fideiussor* or ἐγγυέτης is that of personal surety given on behalf of another person. This form of surety is attested in the legal literature of Late Antiquity as referring to financial transactions, specifically loans; and it is common in the papyri from late antique Egypt as the personal surety of one person as assurance for the proper conduct of another, which will be discussed more fully below.

In legal texts, the guarantor stands surety with his own property for a loan made to a third person, in case of a later default. This is different from surety in advance of a loan, such as pawning a precious object. *Fideiussio* was the prevalent form of guaranteeing a loan in the 1st and 2nd centuries C.E., and gained exclusivity under Justinian.³² The *Institutes* of Justinian define the *fideiussor* thus: "It is common for others to bind themselves on behalf of the promissor. They are then called guarantors [*fideiussores*]. They are invoked by stipulators for greater security. But

³⁰ See the introduction by A. Wenger, in Jean Chrysostome, *Huit catéchèses baptismales inédites* (Paris, 1957), pp. 75–76.

³¹ For ἐγγυέτης as the Greek equivalent of *fideiussor*, see Theophilus Antecessor, *Institutionum graeca paraphrasis*, ed. E. C. Ferrini (Berlin 1897; repr. Aalen, 1967), pp. 345–48.

³² For the early Empire, see M. Kaser, *Römisches Privatrecht*, rev. by R. Knütel (Munich, 2003), p. 347; for the later Roman Empire, see M. Kaser, *Das römische Privatrecht*, 2. Abschnitt: *Die nachklassischen Entwicklungen* (Munich, 1969), pp. 330–33; and A. Steinwenter, *Das Recht der koptischen Urkunden* (Munich, 1955), pp. 30–32.

An example of the potentially perilous consequences of financial *fideiussio* is reported in a letter by Pope Gregory the Great of November 600, asking John, a subdeacon in Ravenna, to intervene with the prefect on behalf of the *argentarius* John, who had always helped out the poor as a *fideiussor*. It seems that an imperial official had taken advantage of John's generous disposition, so that the latter had been forced to seek asylum from his creditors in a church. Gregory the Great, *Registrum epistolarum*, Ep. XI 16, ed. L. M. Hartmann, vol. 2, *Monumenta Germaniae Historica*, Epp. II (Berlin, 1899, repr. 1957), pp. 277–78.

in fact guarantors can be taken for all sorts of obligations, by conduct [*sive re*], by words, by writing, or by agreement.”³³

Already in the ancient world, *anadochoi* was sometimes used for the guarantors of a loan alongside the more common term *egguetai*. This is shown in inscriptions from the first half of the 3rd century B.C.E. that record loans—their recipients, amounts, and guarantors—provided by the temple of Apollo in Delos.³⁴ The same can be observed in Late Antiquity. The legal papyri from Egypt, beginning with the 4th century C.E., often couple the term *eggue* with *anadoche*.³⁵ As R. Bogaert has shown, during the second half of the 4th century there was an increase in banking activity, i.e., the taking in and giving out of money, after a long hiatus caused by the economic crisis of the 3rd century.³⁶ This provides the concrete background for the application of the legal language of financial transactions to the social and spiritual life of Christians under discussion here. One example for the use of banking metaphors is an early 5th-century treatise by Mark the Monk, which establishes a direct relation between Christ as the *egguetes* and the need for lifelong practice of repentance by Christians: “Christ has stood surety for us for the purpose of repentance. He who desists from repentance sets at naught the guarantor.”³⁷

It is in this sense of a continued personal responsibility of the guarantor in case of default on a loan that John Chrysostom explains the role of the sponsor (*anadechomenos*) at baptism: he has a responsibility towards the creditor (God) and the debtor (the baptizand). More specifically, he is responsible with his own possessions for the *entire* sum that is owed. In spiritual matters, this means that he must be constantly vigilant and offer exhortation, advice, and paternal love in

³³ Iustinian, *Institutes* III 20. 1, in *Justinian's Institutes*, trans. P. Birks and G. McLeod, with the Latin Text of Paul Krueger (Ithaca, N.Y., 1987), p. 38 (Latin), p. 111 (English).

³⁴ R. Bogaert, *Banques et banquiers dans les cités grecques* (Leiden, 1968), pp. 134–35. For a concise German summary of this work, see R. Bogaert, *Grundzüge des Bankwesens im alten Griechenland*, Xenia. Konstanzer Althistorische Vorträge und Forschungen 18 (Konstanz, 1986).

³⁵ R. Taubenschlag, *The Law of Greco-Roman Egypt in the Light of the Papyri, 332 B.C.–640 A.D.* (Warsaw, 1955), pp. 411–17; A. Segré, “L’ΑΛΛΗΛΕΓΓΥΗ,” *Aegyptus* 5 (1924), 185–201, at 189–90.

³⁶ R. Bogaert, “Changeurs et banquiers chez les Pères de l’Église,” *Ancient Society* 4 (1973), 239–70, esp. 269. The activity of bankers is vividly described by John Chrysostom, *In princip. Actorum hom.* IV, PG 51:99. His awareness of banking may explain his use of financial terminology.

³⁷ Mark the Monk, *De poenitentia*, PG 65:981D: Χριστὸς ἡμᾶς ἐπὶ μετανοίας ἐγγυήσατο· ὁ ἀφιεὶς αὐτὴν ἀθετεῖ τὸν ἐγγυησάμενον.

order to fulfil his obligation to the baptizand. He has a personal stake in the catechumen, since both of them share success or failure.³⁸ The enduring responsibility of the baptismal sponsor is also highlighted by Ps.-Dionysius the Areopagite, who explains that the person who seeks admission to baptism will approach his or her sponsor and “will ask him [or her] to accept the responsibility for his [her] admission and everything that concerns his [her] future life.”³⁹ The emphasis on the extension into the future of the baptismal sponsor’s responsibility for the full amount of the debt of the catechumen recurs, as we shall see, in the context of penance.

This notion of a continuing relationship of responsibility between sponsor and initiate opens up a larger context of social interaction, obligation, and reciprocity in which, I wish to argue, the process of penance also has its place. The use in later Byzantine centuries of the term *anadechomenos* or *anadochos* for the person who hears a penitent’s confession suggests that the two roles were understood as similar.⁴⁰ Such relationships of obligation shed new light on our understanding of intercessory prayer and the intercession of saints, showing that their origins lie in the social relations formed around Christian rituals: baptism as initiation into the Church, penance as its renewal, and ordination or monastic profession as its reinforcement.

Guarantors at Ordination

Like penance, ordination to the clergy is considered a second baptism that blots out sins.⁴¹ This ritual too can involve a sponsor or guarantor. A group of Coptic texts from Egypt attests to the idea of a voluntary responsibility for someone else’s conduct that is affirmed by the use of contractual language: these are petitions to the bishop to perform the ordination of a particular person to the diaconate or priesthood, and hence known as “Ordinationsbitten” [requests for ordination]. All of

³⁸ John Chrysostom, II *Catechesis* 15–16, ed. Wenger, pp. 141–43.

³⁹ Ps.-Dionysius Areopagites, *Ecclesiastica Hierarchia* II 2, PG 3: 393B.

⁴⁰ M. Arranz, “Les formulaires de confession dans la tradition byzantine,” *Orientalia Christiana Periodica* 58 (1992), 423–59, at 426.

⁴¹ See for example Canon 9 of the Council of Neocaesarea (314–19), ed. Ioannou, *Fonti IX: Discipline générale antique*, vol. I/2, p. 79, where, with the exception of prior sins of the body that are confessed, “all other sins” are said to be blotted out by ordination to the priesthood.

these petitions come from a specific context, the archive associated with Apa Abraham, bishop of Hermonthis in the first decades of the 7th century.⁴² They include assurances by a third party to the cleric performing the ordination that the ordinand is worthy and suitably prepared—analogous to the character reference provided by the baptismal sponsor on behalf of a catechumen. More than that, in these petitions for ordination the guarantor takes on responsibilities for the future by declaring that he will himself accept any punishment for misconduct in place of the ordinand—analogous to the ideal of the sharing of the burden of sins at penance that will be discussed below.

One ostrakon in this group is of particular interest because it requests the readmission into the clergy of a neglectful priest. The priest Joseph had been excluded from the Eucharist because he had been remiss in tending the lamp at the altar, and he now asks bishop Abraham of Hermontis for readmission. This is followed by the assurance of his son Paul that his father Joseph will be obedient to the bishop and that he himself takes the responsibility for reporting further infringements by his father to the bishop. Should the father fail, Paul promises to assume himself the punishment of exclusion from the sacrament: “His condemnation be upon me.”⁴³ In this instance, not only initiation into the clergy but also the renewal of that status was aided by the personal intervention of another person in good standing.

In the Egyptian papyri of our period, assurances on behalf of others were not limited to supporting someone’s advancement in rank within the Christian Church. In fact, this may be a secondary development out of long-standing socio-economic practice. For *egguaî* were frequently and regularly employed within the context of organized agricultural production as a personal guarantee for the proper conduct and labour performance of a third person. Numerous assurances of this kind survive in the papyri. Most illuminating are those in the archive of the Apion family, a large landholding dynasty whose documentation extends from the 4th to the 7th century. The guarantor in these documents makes

⁴² These texts are also discussed by A. Steinwenter, “Die Ordinationsbitten koptischer Kleriker,” *Aegyptus* 11 (1930–31), 29–34; and E. Wipszycka, “Il vescovo e il suo clero. A proposito di CPR V 11,” *Journal of Juristic Papyrology* 22 (1992), 67–81. The most recent detailed and comprehensive study is by A. Biedenkopf-Ziehner, *Koptische Ostraka*, vol. 1: *Ostraka aus dem Britischen Museum in London* (Wiesbaden, 2000), pp. 18–35. A very brief treatment is found in Steinwenter, *Das Recht der koptischen Urkunden*, p. 31.

⁴³ Limestone ostrakon, British Museum 50 182, after Biedenkopf-Ziehner, *Ostraka aus dem Britischen Museum in London*, pp. 127–132.

his promise to the landowners that a third person will act in conformity with his status, perform an obligation, discharge his allocated labour, or produce the expected agricultural yield. He also assumes a specified penalty for himself if this should not happen. The guarantor in these papyri was often in a superior social position to the person whom he supported, such as an agricultural overseer, but there are many cases where both were of equal status as *coloni adscripticii*.⁴⁴

These cases of assurance in the socio-economic context of Egypt throw into relief a crucial element in the contractual obligation of *eggue*: in this instance, the strength of the guarantor's promise lies not primarily in his pre-existing resources but, rather, in his commitment that extends into the future to undergo punishment or otherwise make restitution on behalf of another, should the latter fail in his obligations.

Guarantors of Penance

As we have seen, the role of the baptismal sponsor was often conceptualized as that of a person standing surety for a loan with his own property in the case of a future default. If a Christian indeed defaulted on his metaphorical loan by falling into sin, the debt had to be settled from the sponsor's metaphorical surplus. The analogy that is invoked is that of a heavenly bank account of good deeds. People in an advanced state of spiritual perfection—especially confessors, martyrs, and holy men—accumulated such wealth in their heavenly bank account that they were able to allow others who had fallen into sin to borrow against it. Thus, the imprisoned martyrs who were awaiting their execution at Vienne and Lyon in 177 were moved by compassion to grant forgiveness to the lapsed: “They did not become puffed up with regard to those who had fallen, but—with motherly compassion—they put

⁴⁴ R. Mazza, *L'archivio degli Apioni. Terra, lavoro e proprietà senatoria nell'Egitto tardoantico* (Bari, 2001), pp. 122–24. For a detailed discussion of the mechanics of suretyship, on the basis of five papyri of the 4th and 5th centuries, see P. J. Sijpesteijn, *Einige Wiener Papyri (P. Vindob. Sijpesteijn)*, *Papyrologica Lugduno-Batava* 11 (Leiden, 1963), pp. 16–36. In P.Oxy. VI 996, a document of ἐγγύη from the Apion Archive, dated to 584, the equivalent verb used for acting as a guarantor is ἀναδέχεσθαι, the same verb as that used for the baptismal sponsor. See G. Bastiani, “Una malleveria dall'archivio degli Apioni (P.Oxy. VI 996),” *Miscellanea Papyrologica*, ed. R. Pintaudi, *Papyrologica Florentina*, 7 (Florence, 1980), pp. 25–30. The combination of ἐγγυᾶσθαι and ἀναδέχεσθαι was common in these specific documents in Late Antiquity. See O. Montevecchi, *La papirologia*, 2nd ed. (Milan, 1988), pp. 192–93.

at the disposal of those in greater need *what they had in abundance*.⁴⁵ There are other instances, as we shall see, where penitential assistance was offered by a person at the same level. Regardless of their relative spiritual status, however, the parties involved were aware of a mutual obligation of assistance that resembled a legal contract.

This process of vicarious penance has been aptly termed “Bussübernahme” by the great German scholar of the 1930s, Joseph Hörmann.⁴⁶ Jean Gouillard noted the importance of “le répondant du péché” in the writings of John Climacus (cited below), and then pursued the theme in the context of spiritual guidance in the 9th century and later.⁴⁷ Robert J. Barringer indirectly addressed this phenomenon in his excellent and exhaustive study of the hagiographical evidence for ecclesiastical penance in the late antique and Byzantine East.⁴⁸

Vicarious penance had its place in the monastic milieu of Late Antiquity, especially in Egypt and Palestine.⁴⁹ The starting point and foundation of the monk’s personal quest for spiritual perfection was the grievous realization of his own constitutional sinfulness. A large part of his ascetic endeavours consisted of penitential practices such as fasting and vigils. If a monk was guilty of specific sinful deeds,

⁴⁵ Eusebius, *Historia ecclesiastica* V 2. 6: ὁ γὰρ ἔλαβον καύχημα κατὰ τῶν πεπτωκότων, ἀλλ’ ἐν οἷς ἐπλεόναζον αὐτοί, τοῦτο τοῖς ἐνδεεστέροις ἐπήρκουν μητρικὰ σπλάγχνα ἔχοντες. Translation and emphasis mine.

⁴⁶ J. Hörmann, *Untersuchungen zur griechischen Laienbeicht. Ein Beitrag zur allgemeinen Bussgeschichte* (Donauwörth, 1913), pp. 205–11, with examples. See also I. Hausherr, *Spiritual Direction in the Early Christian East* (Kalamazoo, 1990; first published in French, Rome, 1955), “Carrying part of the burden,” pp. 141–48. An intriguing pagan parallel are the “confession inscriptions” from 2nd- and 3rd-century Lydia. In one of them, a brother makes restitution [ἀναδεξάμενος] for the transgression of his sister and sets up an inscription on her behalf to propitiate the goddess Anaitis: F. S. Steinleitner, *Die Beicht im Zusammenhange mit der sakralen Rechtspflege in der Antike* (Munich, 1913), no. 17, p. 45, cf. p. 94.

⁴⁷ J. Gouillard, “Christianisme byzantin et slave. Le répondant du péché,” *Annuaire. École pratique des hautes études. Section VI: Sciences religieuses* 82 (1974), 213–19, at 215–17; see also his remarks on penance in Byzantium: J. Gouillard, “Christianisme byzantin et slave,” *Annuaire. École pratique des hautes études. Section VI: Sciences religieuses* 85 (1977), 365–70, at 365–68. Gouillard also noted the fact that the “répondant du péché” is often called *anadochos*.

⁴⁸ R. J. Barringer, *Ecclesiastical Penance in the Church of Constantinople: A Study of the Hagiographical Evidence to 983 A.D.* (D.Phil. thesis, Oxford University, 1979). Standing surety for another’s actions or offering to bear punishment in his stead is not uncommon in the Old Testament. See, for example, Gen 27:13 and 43:9.

⁴⁹ For penance in Egyptian monasticism, see H. Holze, *Erfahrung und Theologie im frühen Mönchtum. Untersuchungen zu einer Theologie des monastischen Lebens bei den ägyptischen Mönchsvätern, Johannes Cassian und Benedikt von Nursia* (Göttingen, 1992), pp. 229–53.

and thus in a state of *metanoia*, his reconciliation could be achieved in several different ways: by his own increased ascetic efforts; in the setting of communal monasticism by a carefully calibrated system of punishments;⁵⁰ within the context of spiritual guidance, by the vicarious penance of a spiritual father; and between two closely associated monks, by the vicarious penance of the brother. It is particularly the last two paths from repentance to reconciliation that are of interest here, because they involve the participation of a third party and are, again, conceptualized in legal and financial terms.

Penance was particularly relevant as a pedagogical tool in the instructions of a spiritual father to his disciple.⁵¹ The role of the spiritual father as a physician, counsellor, mediator, and sponsor [*anadochos*] are well documented in the monastic teachings of Egypt and Palestine in Late Antiquity.⁵² Especially the spiritual father's function of *anadochos* carries resonances of the role of the baptismal sponsor, as he sometimes assists at the ritual initiation into the monastic state.⁵³ This role was interpreted as entailing the obligation by the spiritual father to shoulder the burden of the sins of his spiritual children.⁵⁴ John Climacus in the early 7th

⁵⁰ For the Pachomian monasteries, see A. Veilleux, *Pachomian Koinonia*, vol. 2: *Pachomian Chronicles and Rules* (Kalamazoo, 1981), pp. 141–95. For the community of Apa Shenute, see M. S. A. Mikhail, “An Early Glimpse into the Thought of St Shenouda of Atripe,” *Ägypten und Nubien in spätantiker und christlicher Zeit*, ed. S. Emmel et al. (Wiesbaden, 1999), pp. 497–503.

⁵¹ On the practice of penance in the monastic milieu within the context of spiritual guidance, see B. Bitton-Ashkelony, “Penitence in Late Antique Monastic Literature,” *Transformations of the Inner Self in Ancient Religions*, ed. J. Assman and G. G. Stroumsa (Leiden, etc., 1999), pp. 179–94, esp. 185–90 on “The burden-bearer.” On the weight of sin and the importance of penance, see now also B. Bitton-Ashkelony and A. Kofsky, *The Monastic School of Gaza* (Leiden and Boston, 2006). See also H. Dörries, “The Place of Confession in Ancient Monasticism,” *Studia Patristica* V, ed. F. L. Cross, *Texte und Untersuchungen zur Geschichte der altchristlichen Literatur* 80 (Berlin, 1962), 284–311. The larger context of sinfulness and repentance in Egyptian and Palestinian monasticism, including the sharing of sins, was also sketched out by A. Bingham Kolenkow, “Sharing the Pain: Saint and Sinner in Late Antique Egypt,” *Acts of the Fifth International Congress of Coptic Studies, Washington, 12–15 August 1992*, vol. 2, ed. D. W. Johnson (Rome, 1993), pp. 247–61.

⁵² K. Ware, “The Spiritual Father in St John Climacus and St Symeon the New Theologian,” *Studia Patristica* XVIII/2, ed. E. A. Livingstone (Kalamazoo and Leuven, 1989), 299–316.

⁵³ Saint Stephen, celebrated as an iconoclast martyr, became the “father in the Lord and *anadochos*” at the tonsure of a wealthy widow who took the monastic name of Anna: *Life of Stephen the Younger*, ch. 21, ed. M.-F. Auzépy, *La vie d'Étienne le Jeune par Étienne le Diacre*, Birmingham Byzantine and Ottoman Monographs 3 (Aldershot, 1997), p. 116, line 28.

⁵⁴ Ware, “The Spiritual Father,” pp. 309–11.

century defines the spiritual father as someone “who is able and willing to labor with you in bearing the burden of your sins.”⁵⁵ This ability is connected to the spiritual father’s effective intercessory prayer. The essential armour of athletes of Christ in training, i.e., monks, therefore includes “the protective prayer of their spiritual master which they have as a saving helmet.”⁵⁶ Carrying this notion to an extreme, John Climacus ventures: “It is better to sin against God than against your father. If we make God angry, our [spiritual] director can reconcile Him to us. But if he is angry, then there is no one to speak up for us before God.”⁵⁷ Abba Isaiah of Scetis (d. 491) reminded his followers that, provided they adhere to his teachings, he would render account for them before God’s judgement, but if they were neglectful, they would be held accountable not only for themselves but also for him, since he would be considered guilty of negligence on their behalf⁵⁸—an interesting assertion of complete, and potentially negative, reciprocity in the father-disciple relationship.

Confession of sinful thoughts and deeds to one’s spiritual father was an essential part of spiritual guidance. It led to the absorption of sin through penance, with the aim of attaining reconciliation with God. In his penitential efforts, the disciple could count on the assistance of his spiritual father, often in very concrete coin. Abba Lot urged a monk to confess his sins to him by saying “Confess it to me, and I will carry it.” Then he asked the monk to fast, promising that he would “carry half your fault with you.” After three weeks, Abba Lot received divine assurance that God had accepted the monk’s repentance.⁵⁹ In a similar story, an abba fasted for three weeks with a monk who had fallen into

⁵⁵ John Climacus, *Ladder of Divine Ascent*, Step 3, PG 88:665 D: “Ἐστω σου πατήρ ὁ πρὸς τὸ φορτίον τῶν ἁμαρτημάτων συγκοπιάσαι δυνάμενος, καὶ βουλόμενος, trans. Luibheid and Russell, p. 87. See also Step 4, PG 88:680B–C, trans. Luibheid and Russell, p. 92.

⁵⁶ John Climacus, *Ladder of Divine Ascent*, Step 4, PG 88:677D, trans. Luibheid and Russell, p. 91.

⁵⁷ John Climacus, *Ladder of Divine Ascent*, Step 4, PG 88:728A, trans. Luibheid and Russell, p. 119.

⁵⁸ Isaiah of Scetis, *Oratio I*, PG 40:1107A; Abbé Isaïe, *Recueil ascétique*, trans. H. de Broc, 3rd ed. (Abbaye de Bellefontaine, 1985), p. 45.

⁵⁹ *Apophthegmata, Alphabetical Collection*, Lot 2, PG 65:256B–C; trans. B. Ward, *Sayings of the Desert Fathers* rev. ed. (Kalamazoo and Oxford, 1984), p. 122.

sin with the daughter of a pagan priest and prayed for him: "I pray to you, Lord, grant me his soul and accept its repentance."⁶⁰

Spiritual fathers like this anonymous abba benefited their disciples not only through their prayers but also by sharing in their asceticism. Monastic *askesis* is a permanent state of penance. Monks therefore increased their ascetic efforts in order to compensate for lapses in thought, word, or action, usually under the guidance of their spiritual adviser.⁶¹ Sometimes an older monk would assist a younger colleague in his progress by taking upon himself additional ascetic practices. This seems to have been common in the Pachomian monasteries in the 4th century.⁶² Pachomius himself is said to have struggled along with others and to have offered repentance on behalf of others, even without their request, in order to ensure their spiritual progress⁶³ or to bring them to compunction: "The man of God Pachomius took upon himself for their benefit vigils, supplications, and fasts before the Lord until they repented of all their errors and corrected them."⁶⁴

Spiritual fathers often took very seriously the Pauline injunction in Galatians 6:2: "Bear one another's burdens, and in this way you will fulfil the law of Christ." Anthony, the great pioneer of eremitic monasticism in Egypt, declared: "Leaving the Judgement to the Lord, let us have compassion for one another and bear one another's burdens."⁶⁵ A story told by Clement of Alexandria about the Apostle John illustrates what he calls "a great example of sincere repentance and a great token of regeneration, a trophy of a resurrection that can be seen." On his travels, the apostle came to a certain city and "noticed a strongly built youth of refined appearance and ardent spirit." He entrusted the young

⁶⁰ *Apophthegmata, Systematic Collection*, V 43, *Les Apophthegmes des Pères. Collection Systematique*, intr., ed. and trans. J.-C. Guy, SC 387 (Paris, 1993), pp. 284–88.

⁶¹ Theodore's increased asceticism as voluntary atonement for his negligence in leadership: *Bohairic Life of Pachomius*, ch. 77 and ch. 79, trans. A. Veilleux, *Pachomian Koinonia*, vol. 1: *The Life of Saint Pachomius and his Disciples* (Kalamazoo, 1980), pp. 101 and 103.

⁶² Joint ascetic efforts with a negligent youth by Psenamon: *Vita Prima Graeca of Pachomius*, ch. 104, ed. F. Halkin, *Sancti Pachomii Vitae Graecae*, Subsidia hagiographica 19 (Brussels, 1932), p. 68, trans. Veilleux, pp. 369–70. Ruse of Theodore to help a young monk: *Vita Prima Graeca of Pachomius*, ch. 66, ed. Halkin, pp. 43–44, trans. Veilleux, pp. 342–43, cf. *Bohairic Vita of Pachomius*, ch. 62, trans. Veilleux, pp. 81–82.

⁶³ *Bohairic Vita of Pachomius*, ch. 107, trans. Veilleux, p. 155.

⁶⁴ *Bohairic Vita of Pachomius*, ch. 92, trans. Veilleux, p. 123. The beneficiaries of Pachomius' penitential *askesis* were ten older monks who were lacking in obedience.

⁶⁵ Athanasius of Alexandria, *Life of Anthony* 55. 8, ed. G. J. M. Bartelink, Athanasius d'Alexandrie, *Vie d'Antoine*, SC 400 (Paris, 1994), p. 284. Translation mine.

man to the local bishop for upbringing and education. After the young man had received the proper instruction in the Christian faith, he was baptized. But not much later, he fell into bad company, and it did not take long before he became the leader of a band of robbers. While the bishop who had baptized him gave him up for dead, the Apostle John immediately went to see the young man in the robbers' hideout. After suppressing his initial urge to flee, the young man reacted with shame and compunction as he heard John's assuring words: "I myself will give account to Christ for you. If need be, I will willingly undergo your penalty of death, as the Lord did for us. I will give my own life in payment for yours." Moved to tears by this boundless and unconditional love, the young man threw away his weapons, embraced John, and thus was "baptized a second time through his tears." The apostle assisted his renewed conversion with his prayers and through continual fasting, along with comforting words of counsel.⁶⁶ While establishing an intimate connection between baptism and its renewal by penance, this story evokes the same language of legal and financial transactions that has been highlighted above.

A later example for this conceptualization of vicarious penance comes from the letters of Barsanuphius and John, leaders of a loosely knit community of monks and laymen in 6th-century Gaza.⁶⁷ In the full awareness of his own accumulated spiritual wealth, Barsanuphius generously promised his brothers and disciples that he would shoulder part of the burden of their sins. He did this by applying the same contractual language that we have seen invoked in the context of baptism. One monk was told: "I am hereby giving you a commandment for salvation: which if you observe it, I will bear [*bastazo*] the writ that is against you, and I will not abandon you in this world or in the next... behold then I have taken from you the weight, the burden and the debt."⁶⁸

⁶⁶ Clement of Alexandria, *Quis dives salvetur* 42. 1–15, in *Clement of Alexandria*, vol. 3, ed. Stählin, Früchtel, Treu, p. 187, line 27–p. 190, line 19; trans. G. W. Butterworth (Cambridge, Mass., and London, 1939), pp. 357–65. On this story, see also Poschmann, *Paenitentia secunda*, pp. 252–60.

⁶⁷ For the history of this community and its context, see now J. L. Hevelone-Harper, *Disciples of the Desert: Monks, Laity and Spiritual Authority in Sixth-Century Gaza* (Baltimore and London, 2005). For a briefer treatment that focuses on the role of the leaders, see A. Kofsky, "The Byzantine Holy Person: The Case of Barsanuphius and John of Gaza," *Saints and Role Models in Judaism and Christianity*, ed. M. Poorthuis and J. Schwartz (Leiden, 2004).

⁶⁸ Ep. 239, trans. Bitton-Ashkelony, "Penitence in Late Antique Monastic Literature," p. 187. For a fuller treatment of the importance of prayer and other forms

Vicarious penance offered by holy men on behalf of others must have been common enough to become a hagiographical theme. The Syriac *Life of Abraham of Quidun*, a 4th-century hermit near Edessa, includes an episode in which the saint sets out to save his niece Mary, an ascetic who had fallen into sin and subsequently had become a prostitute at an inn. In a moving scene of recognition, Abraham, who had until then posed as a suitor, begs her to return to her former way of life. He demands to know: "Why didn't you tell me when you committed the sin? I would have done penance for you." He then repeats his offer: "The sin shall be upon me, and I will answer on your behalf to God on the day of judgement. I will be the one who does penance for this sin." It is interesting to note that Abraham announces that his "beloved Ephrem," with whom he shared the monastic life and later the same tomb, will also participate in the penance and prayers on Mary's behalf.⁶⁹ In the case of Abraham and Ephrem, the mutual obligation of monastic brothers went much further than doing penance for one another—an issue that will be explored further below; it also extended to the vicarious penance one of them was undertaking on behalf of a third person. Vicarious penance continued to be a prominent motif in Byzantine hagiography. Andrew the Fool, who probably lived in the early 10th century, intervenes when a demon is about to claim a boy because of his sins, by declaring: "I shall suffer the punishments for his trespasses. I shall give my life for him, and you will have no part in his soul."⁷⁰

A more novelistic treatment in hagiography elaborates on the idea of offering a personal guarantee to God, who is the ultimate creditor of a loan to a third party, but without the penitential aspect. Daniel of Scetis in the 6th century is reported to have told his disciple the

of spiritual assistance for the followers of Barsanuphius and John, see also C. Rapp, "For Next to God, You are My Salvation': Reflections on the Rise of the Holy Man in Late Antiquity," *The Cult of Saints in Late Antiquity and the Early Middle Ages. Essays on the Contribution of Peter Brown*, ed. J. Howard-Johnston and P. A. Hayward (Oxford, 1999), pp. 63–81, at 72–77.

⁶⁹ *Life of Abraham of Quidun*, ch. 24, trans. S. P. Brock and S. Ashbrook Harvey, *Holy Women of the Syrian Orient* (Berkeley, etc., 1987), p. 34, with commentary on p. 28.

⁷⁰ *The Life of St Andrew the Fool*, ed. and trans. L. Rydén, 2 vols., Acta Universitatis Upsaliensis. Studia Byzantina Upsaliensia 4 (Uppsala, 1995), vol. 2, pp. 104–05. Byzantine hagiography, which falls outside the chronological framework of the present paper, contains many more examples of holy men and spiritual guides who participate in the penitential process or indeed absorb the affliction of another. For references to the relevant passages, see the works by Barringer, Gouillard, and Ware.

following story: the stonecutter Eulogius lived a life on the margins of poverty, working for a bronze coin a day, which was enough to buy food for his own sustenance and to share the surplus with poor travellers. Such a generous disposition, Daniel thought, would go much further if Eulogius had access to greater funds for distribution.⁷¹ He therefore beseeched God to give Eulogius greater wealth, accepting the condition that he carry personal responsibility and act as *egguetes* for the soul of the man. Sure enough, Eulogius found unexpected wealth, but instead of distributing it, he used it to go to Constantinople where he purchased a large property and gained high rank in the administration of Emperor Justin I. When Daniel became aware that Eulogius had literally “sold out” his former dedication to charity, he feared for his own soul, knowing that he was responsible for the man’s spiritual “murder.” In a vision of physical punishment and torture, Daniel was admonished to refrain from offering himself as surety beyond his means—a humbling reminder that he had overestimated the size of his own spiritual bank account. The situation was solved by the intervention of the Holy Virgin who, in response to Daniel’s prayers, offered to return Eulogius to his former state. Daniel was now able to consider his obligation of surety discharged. Eulogius’ return to Egypt was as dramatic as his departure. He was implicated in a plot against the new emperor Justinian, his properties were confiscated, and he fled to Egypt where he gradually resumed his earlier life as a stonecutter, much to the relief of Daniel, who realized that he had nearly forfeited his soul.⁷² Putting one’s soul at stake, as Daniel did, eventually develops into the literary motif of the Dr Faustus story of promising one’s soul to the devil as the price for personal favours, which has its antecedents in Greek hagiography.⁷³ Also in this context belongs the narration about Mary of Antioch, which contains the tale of the redemption of Anthemius. He had enlisted the help of a magician to gain Mary’s love, and even went to the extent of denying his faith and his baptism in writing. Out of shame, he sought redemption by approaching a bishop in a city 18 miles away who was renowned for his piety. The bishop fell to the ground with Anthemius,

⁷¹ This story is also revealing for the circulation of God-given wealth, called *eulogia*, as described by D. Caner, “Towards a Miraculous Economy: Christian Gifts and Material ‘Blessings’ in Late Antiquity,” *Journal of Early Christian Studies* 14/3 (2006), 329–377.

⁷² L. Clugnet, *Vie (et récits) de l’abbé Daniel le Scétiote*, Bibliothèque hagiographique orientale (Paris, 1901), pp. 30–47.

⁷³ L. Radermacher, “Griechische Quellen zur Faustsage,” *Akademie der Wissenschaften in Wien, Philosophisch-Historische Klasse, Sitzungsberichte* 206/4 (Vienna, 1927).

and both shed tears and invoked God's mercy for a long time, until the bishop got up and then raised Anthemius as well. The pious bishop thus acted as Anthemius' broker for reconciliation through a shared period of penitential lament, reminiscent of the ritual practices reported for the church in Rome by Sozomen.⁷⁴

A holy man's ability to remove sins did not always need a specific object of redemption. An inscription in the cell of Apa Jeremias at Saqqara records: "This is the spot on which our lord and father Apa Jeremias bowed himself, until he removed the sins of the people of the whole world."⁷⁵ The idea of a spiritually advanced guarantor to assist the penitent sometimes included inhabitants of the Heavenly Kingdom. Thus, the former harlot Mary of Egypt received the assistance of an icon of the Holy Virgin, who acted as her guarantor as she entered the church on Golgotha to repent of her ways.⁷⁶

The ability to carry the burden of the sins of others was one of the hallmarks of a holy man, and it was expected of spiritual guides. In rare instances, the process was reversed and the congregation collectively offered vicarious penance on behalf of an individual. The *Apophthegmata Patrum* relate the story of a bishop who had fallen into fornication. He publicly confessed his sin in the church and announced that he could no longer serve as bishop. The congregation responded by shouting "Your sin shall be upon us," begging him to remain in the episcopate. After he had stretched himself out on the ground and forced everyone to walk over him, a divine voice announced that his sin was forgiven because of his humility.⁷⁷ A similar reaction by the crowds occurred when Ambrose in Milan attempted to avoid ordination to the episcopate by ordering tortures in his function as governor. Refusing to be swayed by this display of sinfulness, they shouted: "Your sin be upon us." Ambrose's hagiographer adds, by way of explanation: "For they knew that he was a catechumen, and therefore promised him with a

⁷⁴ Bibliotheca Hagiographica Graeca 1045, Radermacher, op. cit., pp. 261–70, esp. 269. See n. 14.

⁷⁵ J. E. Quibell, *Excavations at Saqqara (1908–9, 1909–10). The Monastery of Apa Jeremias* (Cairo, 1912), no. 188, p. 55. The monastery was active from c.500 to c.850.

⁷⁶ *Life of Mary of Egypt*, ch. 23–25, PG 87/3:3713B–3716B; trans. M. Kouli, in *Holy Women of Byzantium. Ten Saints' Lives in English Translation*, ed. A.-M. Talbot (Washington, D.C., 1996), pp. 82–84.

⁷⁷ F. Nau, "Histoires des solitaires égyptiens," *Revue de l'Orient Chrétien* 12 (1907), 43–69, nr. 31, p. 62.

confident voice the remission of all sins through the grace of baptism.”⁷⁸ In their collective offer to carry the punishment for Ambrose’s harshness, the Christian crowd assumed the role of the baptismal sponsor, in full anticipation that his imminent baptism would erase all his pre-baptismal sins. The efficacious prayers of the congregation are also reported in the case of a monk who made a public confession in the church of his thoughts of fornication. The entire community troubled themselves on his behalf, praying for a whole week to God, until his affliction ceased.⁷⁹ A spectacular example of communal vicarious penance on behalf of the Emperor Heraclius is attested by the 9th-century historian Eutychius, bishop of Alexandria: despite his assurance that he would protect the Jews, Heraclius yielded to pressure by the monks and the population of Jerusalem to kill the Jews in retaliation for their acts of cruelty and betrayal during the Persian invasion of the city in 614. As part of their efforts to persuade Heraclius to rescind his promise to the Jews, the Christian inhabitants offered to atone for the emperor’s sin by an extensive period of communal fasting.⁸⁰ In these instances of collective assumption of guilt and punishment, the small contributions of a large number of participants added up to the same amount of spiritual capital as the large treasure of one individual holy man.

Fraternal Penitential Assistance

The ability and willingness to carry the burden of another’s sins was not limited to those of superior spiritual accomplishments or the occasional communal effort. Within a monastic context especially, the Lord’s injunction that one member of the community is responsible for the spiritual well-being and growth of another, through admonition and punishment, was taken very seriously. According to Origen, such assistance to another can atone for one’s own sins. He explains that there are seven ways to attain the remission of sins according to the

⁷⁸ Paulinus, *Life of Ambrose* 3.7, ed. M. S. Kaniecka, *Vita Sancti Ambrosii, Mediolanensis Episcopi, a Paulino eius notario*, The Catholic University of America, Patristic Studies 16 (Washington, D.C., 1928), p. 44, lines 19–24.

⁷⁹ *Apophthegmata. Systematic Collection* V 17, ed. and trans. Guy, p. 254.

⁸⁰ Eutychius, *Annales* II 5–7 [271], trans. M. Breydy, *Das Annalenwerk des Eutychios von Alexandrien*, Corpus Scriptorum Christianorum Orientalium 472, Scriptores arabici 45 (Leuven, 1985), pp. 108–09.

Gospels: baptism, martyrdom, almsgiving, forgiveness of one's brother, *assisting one's brother* to leave the path of error, abundant charity, and the process of repentance under the direction of a priest.⁸¹ Basil of Caesarea expresses the same sentiment of a general need for compassion with other sinners in order to save one's own soul in a sermon on the martyr Julitta: "We must therefore weep with those who weep. When you see your brother moaning in repentance for his sins, weep with him. Thus, through the wrongs of another, you will gain correction of your own wrongdoing."⁸²

When fellow monks took up vicarious penance for one another, this was not so much based on the notion of a heavenly bank account of good deeds but, rather, prompted by an urgent sense of mutual, even contractual, obligation of support.⁸³ One would imagine a similar situation to that of the labourers on the Apion estates who recorded their promises of *eggue*. John Climacus suggests that this might be done within the ideal monastic community, which he sketches in his *Ladder of Divine Ascent*: "If one of them committed a fault, many of the brothers would seek his permission to take the matter to the shepherd and to accept both the responsibility and the punishment."⁸⁴ Carrying the sins of others, shouldering the punishment for their misdeeds, could become a lifetime vocation. One monk in a *koinobion* decided to carry all the weight of the sin of others, even to the point of falsely accusing himself of fornication. The other monks ridiculed his apparently excessive sinfulness, but the abbot knew of his practice and took this as an opportunity to teach his monks a lesson.⁸⁵

Most common are the stories of vicarious penance between two monks of equal rank. They occur when one of them has fallen into sin with a woman and the other offers to either absorb the sin entirely or—more frequently—to shoulder half the burden of the sin and of

⁸¹ Origen, *In Leviticum hom.* II 4, ed. Baehrens, *Origenes Werke*, vol. 6, p. 295, line 25–p. 296, line 20. Emphasis added.

⁸² Basil of Caesarea, *Homilia in martyrem Iulittam*, ch. 9, PG 31:257 D. Translation in Hausherr, *Penthos*, p. 42.

⁸³ Briefly discussed by Bitton-Ashkelony, "Penitence in Late Antique Monastic Literature," pp. 188–89.

⁸⁴ John Climacus, *Ladder of Divine Ascent*, Step 4, PG 88:685D, trans. Luibheid and Russell, p. 96.

⁸⁵ F. Nau, "Histoires des solitaires égyptiens," *Revue de l'Orient Chrétien* 17 (1912), 204–11, no. 328, at 209.

the process of repentance.⁸⁶ Fornication seems to be the predominant sin that prompts monks to undertake vicarious penance. A typical story in the *Vitae Patrum* reports that two monastic brothers left the desert and went into the city to sell their handicrafts. One fell into fornication and confessed to his brother, who immediately “admitted” to have done the same. As one did his penance on behalf of the other, God recognized “the toil of their love” and revealed it to their spiritual fathers. The story concludes with the comment: “Truly, this is what it means to offer one’s soul on behalf of one’s brother.”⁸⁷

The two monks in these stories of lateral vicarious penance have invariably lived together for many years as friends and monastic companions. They probably entered the monastic profession together, under the guidance of the same spiritual father, and thus became brothers in the spirit. It is tempting to assume that their initiatory vows of obedience and commitment to their abba also included a promise to support one another on their joint path to spiritual perfection. One such joint declaration survives on a limestone ostrakon from the monastery of Phoibammon, on the west bank of the Nile, across from Luxor, probably dating from the first two decades of the 7th century. Two monks, Peter and Solomon, express their wish to remain together in the monastery of Phoibammon. They declare their willingness to observe all the rules and to be held accountable in case of infringements, including the anticipation of punishment.⁸⁸ According to the editor, Anneliese Biedenkopf-Ziehner, the formulaic expression used for their promise is the same as that in the requests for ordination discussed above. Although this ostrakon does not include the explicit declaration of one monk to suffer punishment or undertake penance for the other, this unique document attests to the existence of a joint declaration of two monks who seek initiation together and are committed to remaining together throughout their monastic lives.

Such a ritual declaration may well be the root of the *adelphopoiesis* ritual of the Eastern Church, which makes lifelong “brothers” out of

⁸⁶ *Apophthegmata. Systematic Collection* V 31 and V 32, ed. and trans. C. Guy, pp. 268–72; Nau, “Histoire des solitaires égyptiens,” *Revue de l’Orient Chrétien* 17 (1912), 294–301, no. 346, at 297–98.

⁸⁷ Nau, “Histoires des solitaires égyptiens,” *Revue de l’Orient Chrétien* 13 (1908), 266–97, no. 179, at 269–70; popularized in Latin in the *Vitae Patrum* V 27, *Patrologiae cursus completus. Series Latina*, ed. J.-P. Migne (Paris, 1844–91) [hereafter PL] 73:880 C–D.

⁸⁸ British Museum 8, in Biedenkopf-Ziehner, *Ostraka aus dem Britischen Museum in London*, pp. 120–25.

two men through the blessing of a priest.⁸⁹ The two men thereby commit themselves to avoid strife and to lend assistance to one another. The text of the ritual itself is first attested in the 8th century, in the earliest surviving Byzantine liturgical manuscript, Vatican City, Bibliotheca Apostolica Vaticana, Barberinus graecus 336. But there is ample narrative evidence for two men being considered “ritual brothers” beginning in the 7th century. Significantly for the present argument, all these early attestations are found in hagiographical sources and refer to the monastic milieu.

If our assumption is correct and a joint vow of mutual support marks the entry into the monastic life of two friends who thus become “brothers” under the same spiritual father, their willingness to perform penance for and with one another is the result not only of a general Christian motivation combined with personal dedication but also of a contractual obligation. One story in the *Apophthegmata* hints at this: Two monastic brothers, accomplished ascetics both, lived together in a *koinobion*, and each was able to see the grace of God on the other. When one of them harshly criticized a third monk for his lack of fasting, his brother immediately noticed the absence of grace in him. The harsh monk realized what he had done: “That is my sin, but toil with me for two weeks and we will beseech God that he forgive me.”⁹⁰ This story shows that vicarious penance between two monastic partners is not only offered freely, as in the other cases discussed above, but may even be demanded and taken for granted.

Such expectations of mutual support shared by two monastic brothers evoke the language of financial transactions and legal obligations that we have encountered in conjunction with baptismal sponsorship and ordination to the clergy. The intercession of holy men on behalf of their penitent spiritual sons and daughters could also be conceptualized in financial terms, for example in the Vision of Theodora that is narrated in one version of the *Life of Basil the Younger*, composed in the late 10th century: On its gradual ascent to Heaven, Theodora’s soul is subjected to an examination of all her bad and good deeds.

⁸⁹ For a discussion of this ritual and its interpretation, see C. Rapp, “Ritual Brotherhood in Byzantium,” *Traditio* 52 (1997), 285–326, for the hagiographical evidence esp. 290–304.

⁹⁰ *Apophthegmata, Systematic Collection*, IX 18, ed. and trans. Guy, pp. 440–42. This is, to the best of my knowledge, the only instance where the occasion for fraternal vicarious penance is a sin other than fornication.

Its progression through the heavenly toll gates is secured through the intervention of Saint Basil, who discharges his responsibility as her spiritual father by purchasing her soul's passage with gold from the treasure that he had himself amassed.⁹¹ It is this kind of scene that must have inspired Peter Brown to observe: "The Byzantine Empire must be thought of as ringed with holy men, each of whose resources were as firmly hidden in the courts of heaven, as fortunes in a Geneva bank."⁹² As these examples show, this kind of spiritual trickle-down economy is not the reserve of a heavenly oligarchy of martyrs, holy men, and saints. It is equally, and perhaps primarily, present in the relationships of spiritual guidance and support that bind a disciple and his teacher or, indeed, a monk and his monastic brother. And it is not the reserve of the penitential process but is equally present during baptism and ordination—all of them transitions to a state of enhanced spiritual existence. It is intriguing to think that such relations of spiritual assistance between living persons provide a very real social background to the idea of intercession by dead saints that would gain such currency in the Middle Ages.⁹³

The phenomena highlighted here show that individuals who were not part of the ecclesiastical hierarchy were capable of brokering the access or re-admission of others to the community of baptized Christians, the deaconate and priesthood, and the community of monks. In a larger sense, they demonstrate that individual Christians were able to negotiate their access to various communities of the faithful that had the character of institutions—delineated by boundaries and regulated by rules of conduct—by extra-institutional means, and they attest to the remarkable flexibility of organized Christian life at least in the early centuries of the Byzantine Church.

⁹¹ *Life of Basil the Younger*, ed. A. N. Veselovskij, "Razyskanija v oblasti russkogo duchovnogo sticha," *Sbornik Otdelenija russkogo jazyka i slovesnosti Imperatorskoj Akademii nauk* 46 (1890), p. 18. See also p. 29 and p. 34, where the necessity of regular confession to the same person is emphasized, and *anadochos* is used as one of the expressions for spiritual father. See also N. Constanas, "'To Sleep, Perchance to Dream': The Middle State of Souls in Patristic and Byzantine Literature," *DOP* 55 (2001), 91-124, at p. 109. I am most grateful to Jane Baun for making this important source accessible to me.

⁹² P. Brown, "The Rise and Function of the Holy Man in Late Antiquity," *Journal of Roman Studies* 61 (1971), 80-101, at p. 95.

⁹³ In this context, it is worth noting that Christian Latin calls relics *pignora*, a word that in classical Latin meant "pledge, surety, pawn"—again evoking the language of financial transactions and obligations.

TOPOGRAPHIES OF PENANCE IN THE LATIN WEST
(c.800–c.1200)¹

Dominique Iogna-Prat
Translated by Graham Robert Edwards

“This is the place of my throne...it is here where I will dwell in the midst of the children of Israel for ever: and the house of Israel shall no more profane my holy name.” Such are the terms that the prophet Ezechiel chooses to proclaim Yahweh’s return to his Temple. Before He takes his place there, Yahweh enjoins this “son of man” to “show to the house of Israel the temple, and let them be ashamed of their iniquities and let them measure the building.”² Following Jerome (c.350–420), Latin exegetes expounded this text to mean that obedience to God’s precepts was essential to an understanding of the purpose of the Church, the Temple’s typological equivalent.³ Gregory the Great (c.540–604), whose views held sway throughout the Middle Ages and beyond, gave a moral reading of the injunction to “measure the building” [*metiantur fabricam*], explaining that, when sinners took “the measure of the building,” this signified their “careful appreciation of the life of the righteous.” The building in which the congregation gathered was thus invoked as a kind of metaphor for “measuring” Christian rectitude.⁴

It is precisely the link between the individual Christian and the emblematic monument of the Christian community—the Church—that is the focal point of this essay. While returning to the basic work that has been done on the history of penance—from the more canonical and classic studies of Jungmann, Poschmann, and Vogel to the more recent and innovative works of Mansfield, De Jong, and Hamilton—I propose to address an aspect that remains largely undiscussed, namely

¹ I am grateful to Abigail Firey and Michel Lauwers for kindly reading over an earlier version of this essay and giving it the benefit of their critical observations.

² Ezechiel 43:10.

³ Jerome, *In Hiezechielem*, 13.43.10–11, ed. François Glorie, *Corpus Christianorum Series Latina* [hereafter CCSL] 75 (Turnhout, 1964), p. 629, lines 717–21.

⁴ Gregory the Great, *Moralia in Iob*, 24.8, ed. Marcus Adriaen, CCSL 143B (Turnhout, 1985), pp. 1200–01, lines 110–22.

the topography, or rather topographies, of penance.⁵ Such an interest doubtless echoes the fairly recent enthusiasm of secular historians of the medieval West for the liturgical practices and ritual dimension of social life.⁶ Yet there is a larger question at stake here, concerning assessment of a historical phenomenon that, though clear in its outlines, had quite complex implications. This is the fact that penance, whatever its form (private, public, or solemn) was like any other social practice in that it was inscribed in space (topography) or, more precisely, its performances took account of society's connection to space (topology).

In the period being studied here, roughly the 9th to 12th centuries—though the same could be said of the entire western Middle Ages—the term *society* was largely coterminous with the term *Church*. In studying a heteronomous world whose purpose and coherence derived not simply from its relation to the hereafter but, most importantly, from the inscription of heaven here below, we need to be sensitive to the elision between the Church as community and the monumental church of stone. The fact that within the medieval Latin world the same term could simultaneously connote the contained and the container makes it possible to grasp the true sociological implications of the monumental and material expressions of a Church that progressively became a structure for the control of populations and also a land-based institution and power regarded as “holy” or “sacred.” The Church did not simply open heaven's door; it was equally fundamental to spatial manifestations of enclosure (church, cemetery, parish, Christian realm, Christendom) that were group-defining centres outside of which society, even humanity, was inconceivable. The realities of inclusion or exclusion: these, in their different topological variants, are the features of medieval penitential discourse that we shall turn to now.

⁵ An excellent historiographical round-up, obviating the need to cite further the classics of penitential history here, is given by Sarah Hamilton, *The Practice of Penance, 900–1050* (Woodbridge, 2001), pp. 9–13.

⁶ On the immoderate and unreasonable employment of the notion of ritual, see Philippe Buc, *The Dangers of Ritual: Between Early Medieval Texts and Social Scientific Theory* (Princeton, 2001).

*The Monastery and the Public Arena**From the City to the Monastery*

In the 5th century, public penance was a solemn act performed in the city's heart, the cathedral church. This act, which generally took place at the beginning of Lent, denoted the subject's admission into an order [*ordo*] whose members were distinguished from the rest of the faithful by a difference in status that barred them from marriage as well as any public or military responsibility. They wore clothes special to them, were assigned a particular zone in the church, and were excluded from the congregation at the point of communion; penitents were proscribed from participation in the sacrament of the altar lest, as Augustine formulated, they ate and drank "their own damnation."⁷ In the second book of his *Dialogues*, Gregory the Great told the story of two nuns bidden by Saint Benedict of Nursia during their lifetime either to chasten their tongues or be punished by a bar from communion. Having died and been entombed in the church, they were divinely compelled to rise from their sepulchres and leave the place of the congregation at the deacon's words, "Let anyone not communicating withdraw."⁸ Even so, at the very time when Gregory was recounting the lofty deeds of monasticism's figurehead Benedict, it was already clear to the faithful that there was no better way for them to expiate their sins than to enter a monastery.⁹ Little by little, as Mayke de Jong points out, public penance shifted from "the publicity of the city to the seclusion of the monastery," and the distinction between "penitents" [*paenitentes*], "converts" [*conversi*], and "religious" [*religiosi*] became increasingly vague.¹⁰ Within the topography of penance, this was a major early turning-point, with a move from segregation within the congregation (the place of worship being fragmented into

⁷ Augustine, *Sermo* 352, *Patrologiae cursus completus. Series Latina*, ed. J.-P. Migne (Paris, 1844–91) [hereafter PL] 39:1550–58, here 1552.

⁸ Gregory the Great, *Dialogues*, 2.23, ed. and French trans. by Adalbert de Vogüé and Paul Antin, *Sources chrétiennes*, 260 (Paris, 1979), pp. 204–11, here 208–09.

⁹ Peter R. L. Brown, *The Rise of Western Christendom: Triumph and Diversity, A.D. 200–1000* (Oxford, 1996), p. 157.

¹⁰ Mayke de Jong, "What was 'Public' about Public Penance? *Paenitentia publica* and justice in the Carolingian world," in *La Giustizia nell'alto Medioevo II (secoli IX–XI)*, Settimane di Studio del Centro Italiano di Studi sull'alto Medioevo, 44 (Spoleto, 1997), 863–902, here 871.

communicants and non-communicants) to dismissal to the margins, those of the renunciation of the world instituted by the monks, penitents by profession. Late antiquity saw the polysemic character of the word *religious* become well established, inasmuch as it could be applied equally to tombs and to the deceased as it was to living persons. In the beginning, the word was used to distinguish Romans who stayed faithful to the civic cult of Roman tradition from the Christians; then the early Latin Fathers used it to describe good Catholics; finally it was applied to the different categories making up the emerging institutional Church.¹¹ It was possible to describe monasteries and churches as “saintly and religious” because saintly and religious men there were wholly focused on the divine: such men were “saintly” by virtue of their life and contact with the saints, and “religious” because, in accordance with the inferred etymology dating from the 2nd century of the Christian era, they had opted to leave [*relinquere*] the world and separate themselves from it. Lexical evolution thus suggests that entry into a monastery and admission to the ranks of similar renouncers symbolically represented dying to the world. The monks’ funerary area, moreover, represented the earliest form that the Christian cemetery was to take, in the sense of a space exclusively reserved to members of the community of the faithful.¹²

Monastic Exile

The history of monarchy in the earliest medieval centuries abounds in colourful scenes of confrontations for power, complete with plots, bloody quarrels, and deposed kings. Many excluded from the throne were dispatched to monasteries. Monastic exile is a common historiographical theme, and nowhere more so than where the Frankish world

¹¹ In advance of publication of Manuel De Souza’s thesis, “*Religiosus* ou les métamorphoses du religieux dans le monde romain, de la fin de la République à l’Empire romain (II^e s. av. J.-C.–V^e s. ap. J.-C.)” (Université François Rabelais–Tours, 2001), see the same author’s *La question de la tripartition des catégories du droit divin dans l’Antiquité romaine*, Bibliothèque du Centre de Recherche en Histoire, 1 (Saint-Étienne, 2004), p. 70 and n. 221.

¹² See the following by Éric Rebillard: “*Koimhthron* et *coemeterium*: tombe, tombe sainte, nécropole,” *Mélanges de l’École française de Rome (Antiquité)* 105/2 (1993), 975–1001, here 999–1001; “Église et sépulture dans l’Antiquité tardive (Occident latin, 3^e–6^e siècles),” *Annales—Histoire, Sciences Sociales*, 54.5 (1999), 1027–46, esp. 1045–46; and *Religion et sépulture: l’Église, les vivants et les morts dans l’Antiquité tardive* (Paris, 2003).

is concerned.¹³ A miniature by Jean Fouquet (died between 1477 and 1481) in the *Grandes chroniques de France* shows Charlemagne inspecting progress on the building of a palace and a chapel—doubtless at Aix-la-Chapelle.¹⁴ In the right-hand corner of this splendid scenario of the monarch as builder appears the episode of Pepin the Hunchback, sent off to a monastery for rebelling against his father. This late representation offers a good synthesis of the three sites of Carolingian public space, namely, the sacred palace, the chapel, and the royal monastery.¹⁵ The third of these sites, which enjoyed immunity and royal protection, provided the outer limit necessary to the definition of public space. Within a topology of powers that distinguished less and less neatly between what belonged to temporal power [*potestas*] on the one hand and spiritual authority [*auctoritas*] on the other, the monastery was a place in which both ecclesiastical discipline and royal justice were exercised. Conforming to a logic evident from the Visigothic era, public penance was the means whereby offenders purged themselves of public crimes, i.e., of scandals or challenges to the order governing Christian society. While it would seem excessive to speak of monastic “prison,” given that sinners temporarily exiled to a monastery were within a regime of “free custody” [*libera custodia*], it is important to note that penance in Carolingian times was tied to a functional place for its operation.¹⁶ Indeed, rather than decreeing a pilgrim’s exile, the penitential discipline that took shape from the 8th century preferred to speak, as one of Charlemagne’s capitularies did, of the fulfilment of penalties “in one place” for cases of serious crimes—a way of putting it that was frequently reemployed by canonists of the 9th to 11th centuries.¹⁷

¹³ On the question of monastic penitential exile, see Klaus Sprigade, *Die Einweisung ins Kloster und in den geistlichen Stand als politische Maßnahme im frühen Mittelalter* (Heidelberg, 1964).

¹⁴ MS Paris, Bibliothèque nationale de France, fr. 6465, f. 96; reproduced and analysed by Colette Beaune, *Le miroir du pouvoir: les manuscrits des rois de France au Moyen Âge* (Paris, 1997), pp. 48–49.

¹⁵ The structural links between these three centres are admirably highlighted by de Jong, “What was ‘Public’ about Public Penance?” pp. 880ff.

¹⁶ The term *prison* is challenged by Mayke de Jong, “Monastic Prisoners or Opting Out? Political Coercion and Honour in the Frankish Kingdoms,” in *Topographies of Power in the Early Middle Ages*, ed. Mayke de Jong and Francis Theuvs, The Transformation of the Roman World, 6 (Leiden, Boston, and Cologne, 2001), pp. 291–328.

¹⁷ *Capitulare ecclesiasticum, ad annum 789*, n. 78, ed. Georg Heinrich Pertz, *Monumenta Germaniae Historica, Leges*, 1 (Hanover, 1835), pp. 65–66, here 66: “Melius videtur, ut si aliquid inconsumtum et capitale crimen commiserint, ut in uno loco permancant laborantes et servientes paenitentiam agentes, secundum quod sibi canonice impositum

*"From Exile to Refuge in a Monastery"*¹⁸

All the same, we must be careful not to confuse the two states of the penitent and the religious. To be temporarily like a monk was not the same as being a monk, at least during the Carolingian period.¹⁹ As Rosa Maria Dessi has clearly shown in the case of the "double conversion" of Arduin (955–1015)—who was marquis of Ivrea, then king of Italy, and who ended his days at Fruttaria—the system of imposed public penance disappeared with the Carolingian royal monasteries. The establishment in the 10th and 11th centuries of patrimonial monasteries placed under Rome's protection permitted the advent of penitential refuges where the sinner might expiate his sins through an expedient more akin to personal conversion than public penance. The great institutions among these refuges are well known: large monasteries with a universal calling, like Cluny and Saint-Victor, Marseille, which proclaimed themselves as clones of the Roman Church; here, as papal bulls and letters made clear, sinners could place themselves under the protection of Saint Peter, that effective advocate in heaven. The second privilege of exemption granted to Cluny by Pope John XIX in 1024 gives a good idea of the attractive force exercised by a monastery defined as a house of reconciliation [*domus pietatis*], a place of burial, and a community of brethren:

Let the righteous find a place therein, and let not the unrighteous desiring to show penitence be rejected. Let the charity of mutual brotherhood be held out to the innocent, and let not the hope of salvation and indulgence of pity be refused to offenders. And should anyone under any kind of anathema seek admission to the same place either for burial of the body or some other cause relating to his welfare and salvation, let him not be shut out from pardon and desired mercy, but cherished with the oil of health-giving medicine and restored with kindness. For it is also just that in the house of pity [*domus pietatis*], not only the love of holy brotherhood

est" [It seems preferable, if they have committed an unaccustomed and capital crime, for them to remain in one place working and serving, doing penance according as has been canonically imposed upon them]. See also Hrabanus Maurus, *Liber paenitentium*, PL 112:1410; and Burchard of Worms, *Decretum*, 6.35, PL 140:474.

¹⁸ Rosa Maria Dessi, "La double conversion d'Arduin d'Ivrée: pénitence et conversion autour de l'an Mil," in *Guerriers et moines: conversion et sainteté aristocratiques dans l'Occident médiéval*, ed. Michel Lauwers (Antibes, 2002), pp. 317–48.

¹⁹ De Jong, "Monastic Prisoners or Opting Out?" p. 322.

should be shown to the just, but also the medicine of indulgence and salvation should not be denied to the refugee sinner.²⁰

Churches of Stone: Purification and Penance

The fact that public penance during the early Middle Ages became the province of the monasteries must not distract us from a more general phenomenon, namely, the emergence of church buildings as settings in which sinners were excluded and reconciled. Referred to by a variety of names during the earliest Christian centuries (*basilica*, *dominicum*, *ecclesia*, *domus Dei*, and so on), the place where the congregation gathered was long regarded by the Fathers as a simple necessity of this earthly City, not as a site of special value in attaining the hereafter, for that was a matter of personal edification. The ritual employed in the earliest Christian times to assign a building to divine use was minimal—a first Eucharist or the placing of relics. Not until the 9th and 10th centuries did *ordines* [rites] of consecration expand in scope, to the point where they included a first phase (the inauguration of building work) and extended to the yard attached, the cemetery.²¹ Within the current of thinking that slowly affirmed the notion of a place special to God and of an area set aside for the Christian dead, the penitential dimension was relatively quite important, as can be seen from the many writings of Carolingian bishops keen to define the various functions of the parish

²⁰ *Papsturkunden 896–1046*, ed. Harald Zimmermann, Österreichische Akademie der Wissenschaften, Philosophisch-historische Klasse, Denkschriften, 174, 177, 198, 3 vols (Vienna, 1984–99), vol. 2, no. 558, pp. 1053–54: “Obtineat in eo locum iustus, nec repellatur poenitere volens iniquus. Prebeatur innocentibus caritas mutue fraternitatis nec negatur offensis spes salutis et indulgentia pietatis. Et si aliquis cuiuscunque obligatus anathemate eundem locum expetierit sive pro corporis sepultura seu alterius sue utilitatis et salutis pro gratia, minime a venia et oblata misericordia excludatur, sed oleo medicamenti salutaris fovendus benigniter colligatur. Quia et iustum sic est, ut in domo pietatis et iusto prebeatur dilectio sanctae fraternitatis et ad veniam confugienti peccatori non negetur medicamentum indulgentie et salutis.”

²¹ On the ritual associated with the start of building work, please see my *La Maison Dieu. Une histoire monumentale de l'église au moyen âge* (Paris, 2006), pp. 539–74. On the *ordines* given in 10th-century pontificals concerning the consecration of cemeteries, see Cécile Treffort, “Consécration de cimetière et contrôle épiscopal des lieux d'inhumation au X^e siècle,” in Michel Kaplan, *Le sacré et son inscription dans l'espace à Byzance et en Occident: études comparées*, Byzantina Sorbonensia, 18 (Paris, 2001), pp. 286–99; and Michel Lauwers, *Naissance du cimetière: lieux sacrés et terre des morts dans l'Occident médiéval* (Paris, 2005).

church: baptism, communion and the weekly Mass, penance, burial, and the payment of tithes.

The Purification of the Faithful and the Purgation of Ecclesial Space

Amalarius of Metz (c.775–c.850) was one of the first liturgical exegetes to reflect upon the specific function of the ecclesial building as a container (the church) for the formation of what it contained—its content—the faithful (the Church). In his *Liber officialis*, Amalarius relies upon the apostle Paul's teaching in 1 Corinthians 11:28–32 to advance the proposition that the church is the place where God is discerned through examination of each person's sins, and that such preliminary purification is necessary for participation in the "Lord's Supper."²² What is noteworthy in the case of Amalarius and his contemporaries is the fact that this purification does not simply have the faithful as its object. In the first instance, the building itself is concerned, as is attested by the *Ordo ad benedicendam ecclesiam* [Ritual for the blessing of a church], which was written in the 840s and destined through its transmission in the Romano-Germanic Pontifical (c.960) to prevail throughout the Latin West.²³ Like the earliest Roman and Gallican consecration orders, which emerged gradually between the 6th and 8th centuries, the *Ordo ad benedicendam ecclesiam* gave prime importance to preliminary exorcisms of salt and water supposed to make the place and the blessed objects inspire awe and to drive away all evil spirits.²⁴ A key moment in the ritual was when the consecrating bishop went three times to the door of the building and struck it three times with his crosier, demanding to be admitted.²⁵ The deacon, standing within and representing the devil, would seek to know who was there. Receiving the answer, "The King of Glory, the Lord who is strong, the Lord who is mighty in battle," he would then admit defeat and open the door. The ritual could then continue within the church, which had been turned from darkness into light. The first allegorical commentary upon the consecration ritual, *Quid significant duodecim candelae* [What do the twelve candles signify?],

²² *Liber officialis*, 3.2, ed. Jean-Michel Hanssens, *Amalarii episcopi opera liturgica omnia*, 3 vols., Studi e Testi, 138–40 (Vatican, 1948–50), 2:262.

²³ *Le pontifical romano-germanique du dixième siècle*, ed. Reinhard Elze and Cyrille Vogel, 3 vols., Studi e Testi, 226, 227, and 269 (Vatican, 1963 and 1972), 1:124–73.

²⁴ *Pontifical romano-germanique*, 1:129–31.

²⁵ *Ibid.*, 1:131–33.

composed in the mid-9th century, emphasized the penitential dimension of the episode.²⁶ The crosier [*virga, cambuta*] with which the consecrator smote the door signified the priestly power [*potestas sacerdotalis*] to bind and loose. The words spoken on entry (*Pax huic domui* [Peace to this house]) were intended to pacify through Christ's blood not simply the faithful but also heretics and schismatics, as well as those contained within the distant ideal of the Church's mission, the Jews and pagans. Only once this "reconciliation" was completed did it become possible for joy to be expressed through an Alleluia.²⁷ The text, whose general baptismal echoes are striking, as if the consecration ritual really represented the church's baptism, draws attention to the dual process of conversion that was at work. The opening of the door signified both the confession of the faithful, who were beckoned through "the door of salvation," and the purification of the space, which turned it from a "den of robbers" into a "house of prayer."²⁸

Much earlier than this, even before the establishment of a consecration rite for churches, a similar concern for purification was evident at the start of building. Thus in his *Ecclesiastical History of the English People*, Bede the Venerable (c.673–735) told of a Lenten fast directed by Bishop Cedd on the site of the future monastery of Lastingham, Northumbria. Cedd's initiative, born of a concern "to cleanse the site which he had received for the monastery from the stain of former crimes by prayer and fasting, before laying the foundations" was not in itself exceptional; it was expected of a holy man that he should sanctify places with his presence, even if this simply meant enjoining penitential forms at a time like Lent when they were particularly appropriate. What is of greater interest is Bede's report that Cedd's action followed "a custom of those from whom he had learned the discipline of a Rule that, when they had received a site for building a monastery or a church they should first consecrate it to the Lord with prayer and fasting."²⁹ Three centuries later, at the time of the earliest known proper rite to

²⁶ Ibid., 1:93–95.

²⁷ Ibid., 1:101.

²⁸ Ibid., 1:103 and 106.

²⁹ *Acceptum monasterii locum primo precibus ac ieiuniis a pristina flagitiorum sorde purgare, et sic in eo monasterii fundamenta iacere...*; Dicebat enim hanc esse consuetudinem eorum, a quibus normam disciplinae regularis didicerat, ut accepta nuper loca ad faciendum monasterium vel ecclesiam prius orationis ac ieiuniis Domino consecrent (*Historia ecclesiastica gentis Anglorum*, 3.23, ed. and Eng. trans. by Bertram Colgrave and Roger A. B. Mynors, Oxford Medieval Texts [Oxford, 1969], pp. 286–88).

coincide with the commencement of building works, the *Canon de aedificanda ecclesia* [Canon concerning the building of a church] contained in the Romano-Germanic Pontifical, the penitential forms intended to purify the area destined for the Eucharistic sacrifice were equally clear. The bishop or his representative planted a cross publicly [*publice*] to signal that the Church had taken possession; he placed a second cross on the spot of the future altar; finally, he uttered a lengthy prayer in which he called for the purification of the founder placed as (s)he was in the glorious lineage of David and Solomon, for all demonic forces to be expelled, and praying “that Thy Church’s pure simplicity and candour of innocence beloved of Thee may rise in this place.”³⁰ The model of purgation attached to rites associated with the building and subsequent consecration of churches had such force that less than three hundred years later, when the Crusaders re-appropriated the land of Christ, they did so as if they were taking over ground intended for divine worship. The earthly Jerusalem regained by the Latins, purified of its stains, depaganized and dejudaized, “was assimilated to a new church.”³¹ That reconsecration took place in 1149, when on 15 July in that year the celebration of the liberation of Jerusalem was coupled with the dedication of the church of the Holy Sepulchre.³²

Consecration rituals and dedication sermons generally draw attention to the penitential colouration of the performed rite. Here let us look at two particularly illuminating examples chosen from the mass of texts that swell in number after the mid-11th century. The preamble of the act of consecration of the Catalan church of Sant Climent d’Orús on 8 November 1037 states that, following the consecration, those who come and pray with compunction at the church are assured of obtaining penance for their sins, even “full indulgence.”³³ One of the greatest preachers of the 12th century, Geoffrey Babio, archbishop of Bordeaux from 1136 until his death in 1158, emphasized (as one might expect a

³⁰ *Pontifical romano-germanique*, 1:122–23: (quoted) “resurgat hic aecclesiae tuae pura simplicitas et amabilis tibi innocentiae candor.”

³¹ Amnon Linder, “The Liturgy of the Liberation of Jerusalem,” *Mediaeval Studies* 52 (1990), 110–31, esp. 124 (list of formulas), 131 (quoted here).

³² John of Würzburg, *Peregrinatio*, ed. Robert B. C. Huyghens, *Corpus Christianorum Continuatio Mediaevalis* 139, pp. 123–24, lines 1111ff. and p. 139 (*Appendix liturgica*).

³³ Cebrià Baraut, “Les actes de consagració d’esglésies del bisbat d’Urgell (segles IX–XII),” *Urgellia* 1 (1978), 11–182, here p. 113 (no. 45)—quoted by Michel Zimmermann, “Les actes de consécration d’églises du diocèse d’Urgell (IX^e–XII^e siècle): la mise en ordre d’un espace chrétien,” in Kaplan, *Le sacré et son inscription dans l’espace*, pp. 301–18, here 315.

former hermit to do) the necessity for the faithful to experience inner conversion when a place for the congregation was being consecrated.³⁴ The first of these sermons, which draws upon a scriptural verse classic in its reference to church-building, Psalm 86 (87), *Fundamenta in montibus suis* [The foundations thereof are in the holy mountains], refers explicitly to the liturgy connected with the doors being opened in response to the consecrator's persistent demand. Geoffrey likens the gates of Jerusalem to faith and to the baptism that leads on to repentance, confession, and satisfaction.³⁵ The faithful are compared to stones that the preachers labour to polish, when they exhort them to renunciation of sin in order to be able to fit them into the Lord's building. The second sermon is based on Paul's epistle to the Ephesians—Ephesians 5:25: *Christus dilexit Ecclesiam* [Christ loved the Church]—with a nuptial tone much to 12th-century taste.³⁶ Geoffrey likens the building's towers to repentance and confession, and portrays the purification of the faithful as an essential precondition for Christ's marriage to his Church. Through consecration, the place of assembly becomes a space of sacramental efficacy, there where "the body and blood of Christ are sanctified for our salvation," where "children are baptized," "sinners are reconciled." The third of these sermons, delivered in 1096, at the occasion of Pope Urban II's consecration of the church of Saint-Nicolas, Angers, returns again to a classic example of scriptural monuments, the Temple built in Jerusalem by Solomon, as mentioned in 3 (1) Kings 8:12–36.³⁷ The preacher makes a play of the correspondences between the dedication of the Temple and that of churches, highlighting the personalities concerned. The earlier dedication [*dedicatio eius*], recalled the memory of Solomon and the repentance of the king and people of Israel; in the second, "our dedication" [*dedicatio nostra*], the consecration of the church (and Church), concerns each individual called upon to purge his own sins. Though relatively unexceptional in its commentary, this third sermon closes on a more original note. The consecration of a church was a particularly propitious moment to demonstrate that the

³⁴ Jean-Paul Bonnes, "Un des plus grands prédicateurs du XII^e siècle, Geoffroy du Louroux dit Geoffroy Babion," *Revue bénédictine* 56 (1945–46), 174–215; the openings of Geoffrey's sermons given in Appendix I permit the reattribution to Geoffrey of items formerly edited as works of Hildebert of Lavardin, as is the case with the three sermons of interest here.

³⁵ PL 171:733A–736B.

³⁶ Ibid., 736C–739B.

³⁷ Ibid., 748A–752A.

rite was effectively taking a location designated for divine use out of common space. But, Geoffrey observes, churches differ among themselves by virtue of the importance of the saint or saints who honour the building with their presence, for example, Saint Nicholas here in Angers. All the more reason, then, that on this occasion Pope Urban II has granted a special prerogative [*quaedam praerogativa*], whereby all the faithful who attend the anniversary of this dedication can expect for all time to receive penitential remission for doing so.

The penitential theme inherent in this type of sermon since the establishment of a consecration liturgy that became ever more solemn during the 9th to 11th centuries found an unexpected outlet in the later part of the 12th century. In his classic work on purgatory (*La naissance du Purgatoire*, 1981), Jacques Le Goff showed how the Latin West gradually advanced from thinking in terms of a designated *time* for the completion of penitential pains in the afterlife toward conceiving of a designated *place* for this, Purgatory. Although the invention of Purgatory was an important contribution to the topography of penance that emerged during the 1160s, the work of Jacques Le Goff and Jérôme Baschet releases us from belabouring its importance; it was the primary stage in a process of general reflection about the places contained in the inchoate cartography of the next world.³⁸ It is nonetheless worth reiterating that the first recorded use of Purgatory as a noun came in a sermon for the dedication of a church, by Peter Comestor (c. 1100–c. 1179).³⁹ Referring to the building of Jerusalem sung of in Psalm 121 (122), Peter speaks of three phases of construction, namely, the extraction of the stones, their dressing (cutting and polishing), and laying. To each phase corresponds a spiritual state (and indeed place), even if in the last resort what is being described are stages in a transition (*unde... quo... qua transeunt* [whence, whither, and where they pass]). The extraction of the stones signifies the violent separation brought about by death; the dressing—a familiar image in dedication sermons—is equivalent to purgation effected in a place proper to it, Purgatory (*in purgatorio poliuntur* [in Purgatory

³⁸ Jacques Le Goff, *La naissance du Purgatoire*, Bibliothèque des Histoires (Paris, 1981); Jérôme Baschet, “I mondi del Medioevo: i luoghi dell’aldilà,” in *Arti e storia nel Medioevo*, ed. Enrico Castelnuovo and Giuseppe Sergi, Tempi, Spazi, Istituzioni (Turin, 2002), pp. 317–47.

³⁹ Reattributed by Jean-Barthélemy Hauréau to Peter Comestor, this sermon appears among the sermons of Hildebert of Lavardin, PL 171:739C–744D; see also Le Goff, *Naissance du Purgatoire*, pp. 210–11.

they are polished]); finally, the laying of the stones denotes admission into an enduring, eternal state in Paradise. It is in this ultimate state that the faithful become living stones, bearing the aspect that God has prepared for them.

Remissions of Penalties: Indulgences

The Sant Climent d'Orús dedication rite and Geoffrey Babio's third sermon cited earlier both explicitly refer to the "indulgence" associated with the consecration of a church or its anniversary. In the vocabulary of late antique Rome, the word *indulgentia* connoted the amnesty granted by Christian emperors.⁴⁰ Its classic, commonly understood meaning dates only from the early 13th century, and refers to the remission [*absolutio, remissio, indulgentia*] or mitigation, granted by the Church, of the temporal penalties due either in this world or in Purgatory for sins confessed and pardoned. This usage was rooted in the ancient practice of commutation of penalties exacted under the early medieval penitential system known as "tariffed penance." This in turn was related to *Wergelt*, a system of justice whereby a particular offence entailed a particular compensation or its equivalent. The end of the Carolingian period saw the emergence of the notion that good works could substitute for the reparations expected of the sinner: a pilgrimage, a gift to a pious establishment, upkeep of a church, and the like. This practice expanded considerably during the 11th and 12th centuries, and its application extended to both persons (particular remissions/general remissions) and penalties (partial indulgences/plenary indulgences). Pursuit of the logic of substitution had the effect of privileging particular times and places. Together with translations of relics—albeit dwarfed by the appeals to go on crusade that were initiated by Pope Urban II in 1095—consecrations of churches and cemeteries figured among the solemn occasions during which prelates from the 1030s on granted generous remissions of penalties. Participation in the building of a place of worship was considered to be so excellent a work that the Pontifical of William Durandus (1230–96) mentions the grant of an indulgence at the very

⁴⁰ Still invaluable on the history of indulgences are the works of Nikolaus Paulus, *Geschichte des Ablasses im Mittelalter: Vom Ursprunge bis zur Mitte des 14. Jahrhunderts*, 2 vols (Paderborn, 1922–23), re-ed. Thomas Lentz (Darmstadt, 2000); and Bernhard Poschmann, *Der Ablass im Licht der Bußgeschichte*, Theophantia, 4 (Bonn, 1948).

outset of building works to sinners present during the ceremony of laying the first stone.⁴¹ Hence, too, the development of acts of oblation on church building sites, apparent from the mid-12th century. In the course of one of his letters, Hugh of Amiens, archbishop of Rouen (1130–64) notes how, at Chartres and in his own diocese, unnamed persons, having confessed their faults and obtained absolution, came and worked in silence like beasts of burden on the sites where churches were being built.⁴² A long anonymous *chanson de geste* dating from the beginning of the 13th century, *Les quatre fils Aymon*, otherwise known as *Renaud de Montauban*, describes how this edifying theme spread rapidly from the sphere of pastoral care to the world of chivalric values. After a long struggle in company with his brothers against Charlemagne, who is portrayed as the very model of an iniquitous overlord, Renaud ends his life as a penitent and sanctifies himself by working as a labourer on the building-site of Cologne Cathedral.⁴³

The way in which particular places could gain enhanced status is illustrated by the well-known practice of substituting one penitential pilgrimage for another. The act relating to the consecration of Saint Peter's abbey at Portella in Catalonia on 21 September 1035 is one of the oldest witnesses to this practice in the history of indulgences: in order to benefit from penitential remission, penitents supposed to go on pilgrimage to Rome might, in a manner of speaking, swap one Petrine rock for another, if instead of going to Rome they visited Portella seven times with a candle. The same document also provides that the maintenance of three or four master masons for forty days—possibly on the abbey church building site—was equivalent to a pilgrimage to Jerusalem.⁴⁴ On the same pioneering front of Christendom against Islam, Pope Urban II in 1089 proclaimed that contributing to the reconstruction of the city of Tarragona and its cathedral church was

⁴¹ *Le pontifical romain au Moyen Âge*, ed. Michel Andrieu, vol. 3 (*Le pontifical de Guillaume Durand*), Studi e Testi, 88 (Vatican, 1940), 2.1, pp. 451–55 (*De benedictione et impositione primarii lapidis in ecclesie fundatione*).

⁴² *Epistola* 10 (*De hominibus qui vice iumentorum trahebant carpenta ad aedificandas ecclesias*), PL 192:1133B–34A, here 1133B–D.

⁴³ *La chanson des quatre fils Aymon*, ed. Ferdinand Castets, Publications de la Société pour l'étude des langues romanes, 23 (Montpellier, 1909), lines 18,006–162.

⁴⁴ Baraut, “Les actes de consagració d'esglésies,” no. 44, pp. 110–12. The provisions of the act were confirmed with several modifications by bishops in synod at Narbonne in 1043: see Paulus, *Geschichte des Ablasses*, p. 99.

a form of crusade; the bull issued in that connection spoke of the Christians as “a wall and a glacis” [*murus, antemurale*].⁴⁵

The Centrality of Church Buildings to Public Penitential Ritual

In regard to mitigated penalties, the consecration act for Saint Peter's, Portella, also mentions penitents obliged to come to the abbey to fast for the 40 days of Lent; such individuals were to enjoy one day's remission from fasting each week. As a place purified by the consecration ritual, the church was the obvious context in which penitents should perform their penance. On the first day of Lent, Ash Wednesday, they went to the church to confess their faults. The earliest known *Confiteor* [prayer of confession] in the so-called Poitiers Pontifical (of the later 9th century) was partly concerned with offences committed against the holiness of the place of worship, soiled by profane behaviour.⁴⁶ In this case the sin was confessed in the very place in which it was committed. But ritual confession in church worked more generally to inscribe the faithful onto a monumental framework that signified their belonging to a community. Such is the sense behind the Fourth Lateran Council's canon *Omnis utriusque sexus* (1215), which came just after important reminders about keeping the church pure (by excluding profane furnishing; by keeping the holy chrism and Eucharist under lock and key). The canon prescribed that all the faithful were to make an annual confession to their “own” priest [*sacerdos proprius*], with the attachment to a particular spiritual director implying inclusion within his province of competence, i.e., the parish and its church.⁴⁷

⁴⁵ PL 151:303. Urban II's policy on the Hispanic front is analysed by Alfons Becker, *Papst Urban II. (1088–1099)*, vol. 1, *Schriften der Monumenta Germaniae Historica*, 19.1 (Stuttgart, 1964), pp. 227–54.

⁴⁶ *Il cosiddetto Pontificale di Poitiers* (Paris, *Bibliothèque de l'Arsenal*, cod. 227), para. 34, ed. Aldo Martini, *Rerum ecclesiasticarum documenta*, Series maior, Fontes, 14 (Rome, 1979), pp. 13–15, here 15: “...in ecclesiam Dei superbe intrando, stando, sedendo et egrediendo, et otiosis fabulis ac turpibus colloquiis in ea cum aliis insistendo, vasa sancta et ministerium sanctum polluto corde et manibus inmundis tangendo. Orationem et psalmodiam atque officium divinum neglegenter in ecclesia Dei faciendo...” [...by entering the church of God, standing and sitting there, and leaving it in pride, and indulging therein with others in idle gossip and filthy speech, and touching the holy vessels and holy ministry with polluted heart and unclean hands. By negligent performance of prayer and psalms and the divine office in the church of God].

⁴⁷ *Concilium Lateranense IV*, canon 21, in *Conciliorum oecumenicorum decreta*, ed. Giuseppe Alberigo et al. (Basel, 1962), p. 221.

In the case of serious offences against the life of the community, the church was the setting for the solemn, temporary exclusion of the offender from the Christian congregation. Attested before the 8th century in the ancient Gelasian sacramentary, this ritual constantly increased in scope over the following centuries.⁴⁸ Burchard of Worms's *Decretum*, which bears testimony to its development in the early decades of the 11th century, states that the penitents should present themselves to the bishop before the church doors, prostrate, dressed in sackcloth and in bare feet. It was, however, the parish priests who received the repentance of their flock and enjoined upon them the penitential penalties their offences demanded. All the penitents then together entered the church, where the bishop, prostrate and in tears, chanted the seven penitential psalms, before laying his hands on them, sprinkling them with holy water, marking them with ashes, and covering their heads with haircloth. Thereupon he enjoined the deacons to drive out the penitents, while the clerics in attendance intoned the response *In sudore vultus* [In the sweat of thy face shalt thou eat bread], a ritual reminder of the words of God to Adam as he was driven out of Paradise (Gen 3:19).⁴⁹ Around the year 1100, the Besançon-Tours Pontifical gave an even more dramatic rendition of the exclusion scene. While the doors of the church were being closed behind the penitents, the bishop pronounced that they had been expelled from Holy Mother Church for sin, just as sinful Adam had been excluded from Paradise. After a short interval the doors were opened again, thereby "showing them how great the distance is between the good, who remain in the church with God and his saints, and the guilty, who for their iniquity will be cast with the devil into everlasting punishment, if they do not correct themselves through penance."⁵⁰

⁴⁸ On the evolution of public penitential ritual, see Josef A. Jungmann, *Die lateinischen Bußriten in ihrer geschichtlichen Entwicklung*, Forschungen zur Geschichte des innerkirchlichen Lebens, 3–4 (Innsbruck, 1932), pp. 45ff. (penance) and 74ff. (reconciliation). Mary C. Mansfield, *The Humiliation of Sinners: Public Penance in Thirteenth-Century France* (Ithaca and London, 1994), shows that the rite of public penance was still very much alive after 1200.

⁴⁹ See Burchard of Worms, *Corrector sive medicus* (= *Decretum*, book 19), ch. 26, *PL* 140:984B–D. See Mansfield, *Humiliation of Sinners*, p. 171, where the erroneous attribution of the canon to the Council of Agde and its subsequent citation by Burchard and Gratian are noted. Additional transcriptions are in Mansfield, Appendix III, pp. 299–303.

⁵⁰ Edmond Martène, *De antiquis ecclesiae ritibus*, 3 vols in 2 (Venice, 1788), vol. 1, ch. 6, art. 7, ordo 13: "Et parvo intervallo facto, iterum aperiat ostium, ostendens eis

The reconciliation of the penitents on Holy (Maundy) Thursday signified their re-integration into the Church, and this reversal of status was mirrored by their return within the Christian congregation's monumental context. The ceremony brought to mind that the church into which they were welcomed anew was pre-eminently the place in which other changes of condition were effected through socially important gestures, not least the rite for the enfranchisement of slaves [*manumissio*], which had taken the form of a solemn act accomplished in church since the 4th or 5th century.⁵¹ The penitents prostrated themselves in the *atrium* [forecourt], while the bishop waited in front of the church doors. The archdeacon requested the bishop to readmit those at fault who had completed their penalties. The bishop then summoned the penitents, who rushed to his feet. The congregation, who symbolized the unity of the reconstituted Christian community, might then go into the church. This ritual, which was already extant in the ancient Gelasian Sacramentary, developed more or less thereafter. The so-called Poitiers Pontifical contained a noteworthy variation. The penitents minded by the archdeacon were kept separate. Once the bishop had made inquiry about their penalties, he went into the church on his own and made his way to the altar. There he turned round to face the church door, where the penitents had remained, marking, from the church entrance to the site of the redemptive sacrifice, the distance they still had to travel in order to be reconciled.⁵²

Ecclesial Topography and Social Topology

The Mystic Body of the Church: Inclusion and Exclusion

The expressive force of the gestures of exclusion and readmission embodied in the rite of public penance came essentially from the reality that in medieval Christendom membership of the Christian community was expressed within a topography proper to it. It was as if to be *of*

quanta distantia sit inter bonos, qui cum Deo et sanctis ejus remanent in ecclesia, et reos qui pro sua nequitia cum diabolo projiciendi sunt in supplicium aeternum, nisi se per penitentiam correxerint."

⁵¹ On this see, among others, Regino of Prüm, *De ecclesiasticis disciplinis*, 1.403, PL 132:271AB.

⁵² *Il cosiddetto Pontificale di Poitiers*, paras. 24–27, pp. 139–40.

the Church, one had to be *in* the church. Logically, therefore, there were Christians, those living stones of the sacramental community who constituted the Church, and there were others. The establishment of a gulf between those who were members of the body of Christ and those who were not is clearly apparent, from the 1050s on, in commentaries on the canon of the Mass, especially on the formula concerning the oblation of the Eucharistic elements *Ut nobis corpus et sanguis fiat dilectissimi Filii tui domini nostri Iesu Christi* [That it may become for us the body and blood of Thy most beloved Son, Our Lord Jesus Christ].⁵³ Referring to the Augustinian dictum that “there is no place of true sacrifice outside the Catholic Church,” exegetes supplied a restrictive definition of *nobis* [for us], understood as excluding others—all others, i.e., heretics, Jews, and pagans (most often the Saracens). Among these others belonged also the penitents who were temporarily excluded from the mystic body of the Church yet remained within its jurisdictional space. Insofar as the medieval world failed to distinguish (or distinguished poorly) between the Church and society, such a rejection from the community of partakers in the sacrament amounted to no less than a quasi-exclusion from the social body. For attempting to murder the bishop of Verceil, the marquis of Ivrea and king of Italy mentioned earlier, Arduin, was forced to lay down his arms and was forbidden to eat meat, embrace man or woman, stay more than two nights in one place, or receive the body of the Lord; he also had to do his penance in a place where he was unlikely to wrong any of those who had taken an oath against him.⁵⁴

In such circumstances, the penitential weapon granted to clerics in the power of the keys—the science to discern offences coupled with the power to exclude from the communion of the saints—was a fearsome and efficient means of social regulation. The topography of inclusion and exclusion that we see here illustrates a social topology in which the hierarchic places and functions that constituted the Christian order are discernible in the form of a great pyramid with the clergy at the top. Indeed the main contribution of the history of penance in the

⁵³ Alain Rauwel, “*Expositio missae*: essai sur le commentaire du Canon de la messe dans la tradition monastique et scolastique,” 2 vols (unpublished doctoral thesis, Université de Bourgogne–Dijon, 2002).

⁵⁴ See above, n. 19. Hamilton, *The Practice of Penance*, pp. 1–2, 7–8, 207–08, shows clearly what may be particular to the case of Arduin and the Italian context within a general study of penance in the early Middle Ages.

Middle Ages to general inquiry into social control in the West is the clarity with which it shows the inexorable rise in power of the clergy within society. Following Josef Andreas Jungmann, historians of liturgy have long noted the evolution in forms of absolution between the 9th and 13th centuries, ending in what may be termed the affirmation of a “priestly *ego*” as confirmed in the *De forma absolutionis* of Thomas Aquinas.⁵⁵ The “absolution of sins” [*absolutio peccatorum*]—a phrase that became current during the Carolingian era—was early on expressed in the optative: the priest charged with remitting the sins besought God’s mercy and, at the moment of absolution, used a jussive (volitive) subjunctive in the passive voice, *Absolutus sis* [May you be absolved]. The 10th century saw the advent of active indicative forms, whereby the priest indicated in the present tense the act he was effecting: *Nos etiam absolvimus* [We absolve]. But, by the 13th century, evolution had run its course, in the passage from an imprecation to the priest’s declaration in the first person singular indicative active *Ego te absolvo* [I absolve you], by virtue of the power to bind and loose given by Christ to his disciples (Matt 16:19).

It is worth noting that this affirmation of the “priestly *ego*”—the power that priests received at ordination to mediate and effect sacramentally in the penitential sphere—coincided with the notion of the “Treasury of Merit” central to the doctrine of indulgences. This idea, which emerged during the 12th century even if not defined canonically before the 13th, was founded on the notion that there existed a superfluity of accumulated holiness from the past, a sort of “community chest” on which the Church was able to draw in order to fund its grants of penitential remission. In a great zero-sum game, the Church could cancel the debts of some by using the credits of others, the excess of satisfaction of the latter group being called upon to balance out the excess sins and penalties of the former. Henry of Susa (c.1200–70) explained the idea in very concrete terms, using the word *scrinium* [chest or coffer] to denote the “place” where the Church collected and held the effusions of blood that Christ (who was sinless) had freely given together with his saints’ own excessive outpourings:

And since the Son of God poured out not just a drop of his blood but all his blood for sinners—and besides, the Martyrs poured out their blood on

⁵⁵ Jungmann, *Die lateinischen Bußriten*, pp. 201–30. For more on Aquinas and the *forma absolutionis*, see the essay by R. Emmet McLaughlin in this volume.

behalf of the faith and the Church, and were punished more than they had sinned—it is clear that in this outpouring every sin is punished: and this effusion of blood is treasure lying in the Church's coffer [*scrinium*], to which the Church has keys; hence, when she wishes, she can open the coffer [*scrinium*] and pass on her treasure to whomever she should wish by making remissions and indulgences.⁵⁶

The word *scrinium* had many different areas of application, possibly meaning not just a box, casket, or reliquary but also an office, chancellery, library, or archive. Its use here is another forceful illustration of how inclined the institutional Church was to present itself in three-dimensional architectural forms, large or small, suggestive of the metonymic link between content (here Treasury, Church) and the container (casket, church) it was. This *scrinium* was thus a sort of concentration of the church, a functional space belonging to clerics with keys allowing them to draw on the treasury that was the community's "chest."

The Margins of the Clerical Penitential System: The World of the Laity and Private Spheres

The rise of clerical power within the Church, so apparent in the history of medieval penance, nevertheless did not entail a social topology of absolute control over individuals within an all-embracing, well-defined and effectively regimented whole. It is all the more important to make this point because, since Pierre Legendre's work, there has been a tendency to regard the dogmatic order of the great 12th- and 13th-century canonists as a distant precursor of modern bureaucratic forms of surveillance.⁵⁷ That is why it is worth ending with a rapid look at the margins of the institutional Church's penitential system.

⁵⁶ Henricus de Segusio Hostiensis, *Summa aurea*, book 5, *De remissionibus* (Lyon, 1588), pp. 357–58: "Et filius Dei non solum guttam sed totum sanguinem fuderit pro peccatoribus—et praeterea Martyres pro fide et Ecclesia sanguinem suum fuderunt, et ultra quam peccassent puniti fuerunt—restat quod in dicta effusione omne peccatum punitum est: et haec sanguinis effusio est thesaurus in scrinio Ecclesiae repositus, cuius claves habet Ecclesia; unde, quando vult, potest scrinium aperire et thesaurum suum cui voluerit communicare, remissiones et indulgentias fidelibus faciundo." This extract is quoted in French translation by Véronique Pasche, s.v. Trésor de l'Église, *Dictionnaire encyclopédique du Moyen Âge*, ed. André Vauchez, 2 vols (Paris, Cambridge, and Rome, 1997), 2:1536.

⁵⁷ Pierre Legendre, *L'amour du censeur: essai sur l'ordre dogmatique*, *Le champ freudien* (Paris, 1974).

A first step to the margins is offered by epic literature in the vernacular, especially the Arthurian romances, which, from the 12th century on, embodied the ideals of aristocratic circles and portrayed models often rivalling those of the clergy. Such literature had its own topology, placing the Christian king and Christian knight at the core of the ideological system, subordinating the clerics, and offering an alternative dialectic of inclusion and exclusion. The lay world was no less holistic than that of the clergy, but it had its own way of envisaging the relationships by which people belonged to society. A major place was accorded to stories of a quest, be it for personal salvation or for the Grail, and these narratives were strongly dramatized with sudden life changes driving the main romantic figures to break with their normal settings. That is why movement and travel are so strongly represented in them, especially the theme of the penitential journey (quest, exile, or pilgrimage). It was an occasion for social and spatial separation: the hero exchanged society's space for positive points of exteriority—wildernesses, forests, or islands—where there was a whole parallel world of errant knights, charcoal-burners, fishermen, and hermits leading their lives on the margins of society.⁵⁸ The differences between clerical and lay notions of penitential topography emerge clearly in an episode in Guibert de Nogent's *Monodiae*.⁵⁹ Though recounted in educated Latin, the story offers a fairly clear glimpse of the ideals of contemporary lay aristocracy. Guibert reports the conversion of Evrard II of Breteuil, a rich and powerful lord related to the Capetian royal family in the 1070s. Conscious of his sins and vices, Evrard decides to change his life and leave home. In the company of several close friends, he departs for foreign and unknown parts. Here he becomes a charcoal-burner and makes a living by selling his product in the towns and countryside. His

⁵⁸ An introduction to the penitential pilgrimage in medieval epic literature is offered by Valérie Galent-Fasseur, *L'épopée des pèlerins: motifs eschatologiques et mutations de la chanson de geste*, Perspectives littéraires (Paris, 1997), pp. 115–88. For a sensitive structural reading that takes full account of the topographical substructure of a penitential narrative, see Anita Guerreau-Jalabert, "Inceste et sainteté: la *Vie de Saint Grégoire* en français (XII^e siècle), *Annales—économies, sociétés, civilisations*, 43.6 (1988), 1291–319.

⁵⁹ Guibert of Nogent. *Monodiae* (*De vita sua*), 1.9, ed. and trans. into French by Edmond-René Labande, Les Classiques de l'Histoire de France au Moyen Age, 34 (Paris, 1981), pp. 58–59; trans. into English by Paul J. Archambault as *A Monk's Confession: The Memoirs of Guibert of Nogent* (University Park, 1996), here pp. 25–28. For an analysis of this episode, see my "Evrard de Breteuil et son double: morphologie de la conversion en milieu aristocratique (v. 1070–1120)," in *Guerriers et moines*, ed. Lauwers, pp. 537–57.

penitential change of status connotes movement from one designation to its opposite within a whole series of distinctive contrasts: exterior–interior; society–solitude; sinner–penitent; *miles* [knight]–charcoal-burner. The viability of this model is tested in the middle section of the narrative, where Evrard is curiously brought short by a sudden confrontation with his double. One day, when the charcoal-burner is visiting a village, he is met by a bizarrely dandified character who, claiming the other’s conversion for himself, declares to the stupefied charcoal-burner that he is Evrard, formerly a rich count in France, who has chosen exile so as better to bewail his sins. This confrontation introduces a second stage in Evrard’s conversion. He understands that if another can so easily adopt his persona, like a mask in a theatre, then his whole roaming lifestyle is but a delusion. Hence the need for a second departure, this time from exile to stability, from penitent charcoal-burner to monk. Together with his companions, Evrard joins without delay the Benedictine community of Marmoutier.

Guibert’s strange doppelganger story had a dual purpose. First, as an exemplum, it condemned the roaming of penitents and lay converts living an autonomous and solitary life. Second, it was a criticism of quests for salvation that were seen as too individualistic, exterior to the places, ways, and forms offered by the institutional Church. Through the specifics of modes of conversion, Guibert was raising the general question of a person’s relationship as a believer or *persona fidelis* to his status as a Church member or *persona Ecclesiae*—as an individual and as part of the Christian community. This question interests us in the present context insofar as the historiography of penance in the medieval West postulates increasing individualization, with the emphasis supposedly moving, over the 9th to 13th centuries, from the public “forum of penance” [*forum poenitentiae*] to the private “forum of conscience” [*forum conscientiae*].⁶⁰

The first known example of the *Confiteor*—the confession of sins in the first person, in public, on Ash Wednesday—dates from the 9th century.⁶¹ It is this early period that is taken by Josef Jungmann to mark the change

⁶⁰ In advance of the long-awaited appearance of Joseph Goering’s important contribution, “The Internal Forum and the Literature of Penance and Confession,” in *The New History of Canon Law*, I am grateful to the author for giving me access to the manuscript version of his study.

⁶¹ See above, n. 46; the *Confiteor* was subsequently incorporated into the Romano-Germanic Pontifical, 99, 50a; see ed. cited above, n. 23, 2.16–17.

of emphasis from *offences* as such, the focus of the tariffed penance of the early Middle Ages, to *penitents* personally acknowledging their sins, the sign of a more personalized approach.⁶² Even if the procedure was neither private nor secret, it probably marked a major evolutionary stage toward the requirement by the Fourth Lateran Council's canon *Omnis utriusque sexus* in 1215 for all the faithful to confess annually each to their own pastor. Jungmann also points to this period as marking the beginnings of the custom, within private penance, of interrogating penitents on the basis of certain individual markers such as condition, sex, age, order, working life, and so on, a concern that perhaps distantly prefigures the "moral sociography" beloved of the Schoolmen.⁶³ That said, it is difficult to establish that this *personal* confession was actually *private*. The confessional was a 16th-century invention.⁶⁴ Without it, the sacramental rite of penance would have been a semi-public, perhaps communal affair, even if it was non-liturgical and gives the impression of taking place outside space.

A similar approach suggests that penance was able to change its tone and allow the faithful the space consistent with the individualism inherent in Christianity itself. This individualization achieved unequalled heights of refinement among the canonists and theologians of the 12th and 13th centuries, with the definition of the primacy of private over public law, whereby the *forum conscientiae* was not subject to the Church's justice (*Ecclesia de occultis non iudicat* [The Church judges not concerning hidden things]) but to the judgement of God, who alone could plumb the loins and heart.⁶⁵ It explains the refinement of a moral psychology and the focus by penitential theologians upon intention, examination of conscience, and essential self-questioning in contrition. It also gave rise to a fault-finding casuistry, articulated pre-eminently in *summae* for confessors and designed to track the twists and turns in the minds of sinners, whom the community could not leave to themselves to purify and "rebuild" themselves.

⁶² Jungmann, *Die lateinischen Bußriten*, pp. 189–90.

⁶³ The term *moral sociography* belongs to Peter Biller, "Confession in the Middle Ages: Introduction," in *Handling Sin: Confession in the Middle Ages*, ed. Peter Biller and Alastair J. Minnis, *York Studies in Medieval Theology*, 2 (York, 1998), pp. 3–33, here p. 18.

⁶⁴ John A. Bossy, *Christianity in the West, 1400–1700* (Oxford, 1985), pp. 134–35.

⁶⁵ On this major question, see Peter Von Moos, "L'individu ou les limites de l'institution ecclésiastique," in *L'individu au Moyen Âge: individuation et individualisation avant la modernité* (Paris, 2005), pp. 271–288. See also Stephan Kuttner, "Ecclesia de occultis non iudicat," in *Acta Congressus Iuridici Internationalis VII saeculo*, 5 vols (Rome, 1935–37), 3:225–46.

This last metaphor takes us back to our opening inquiry about the links, in the medieval West, between penance and architecture. During the 1220s, the English theologian Robert Grosseteste wrote an important *summa* known, from its opening words, as *Templum Dei*. This title is borrowed from the apostle Paul's famous description of Christians in 1 Corinthians 3:17 as a living "Temple of God." Grosseteste makes clear that the clergy are a particularly apt embodiment of this image since they are the "Temple of the Holy Spirit" (1 Cor 6:19). The "Temple of God" being dual, both body and spirit, the clerics are peculiarly well-fitted to help the faithful to "build and preserve the Temple" in confession. The *summa* that follows is thus a compendium of information that confessors need to know in order to fulfil their task of edifying consciences—a task which would, believer by believer, living stone by living stone, build the Church.

BLUSHING BEFORE THE JUDGE AND PHYSICIAN: MORAL ARBITRATION IN THE CAROLINGIAN EMPIRE

Abigail Firey

Confessions seem to litter the Carolingian landscape.¹ Louis the Pious, emperor, made a public confession. Pope Leo III made a public confession. Archbishop Ebo of Rheims made a public confession. Gottschalk, monk of Orbais, made a public confession. Queen Theutberga, wife of Lothar II, made a public confession.² Confession, it seems, was a

¹ *Confessions* is here used in the broadest sense, to encompass a range of ritualized statements regarding guilt or its absence. The formulae for penitential confessions and oaths of compurgation in the Carolingian period are so similar that a claim of innocence may in many ways resemble an admission of guilt. The variation in such formal recitations of the speaker's spiritual condition seems to permit an expansive understanding of *confession*.

² Such confessions had enormous political significance, as has been well established by Mayke de Jong in her now classic article "Power and Humility in Carolingian Society: The Public Penance of Louis the Pious," *Early Medieval Europe* 1 (1992), 29–52. For a broader contextual study of Carolingian penitential performances, seen again through a political lens, see her "Transformations of Penance," in *Rituals of Power: From Late Antiquity to the Early Middle Ages*, ed. Frans Theuvs and Janet L. Nelson, *The Transformation of the Roman World*, 8 (Leiden, 2000), pp. 185–224. The authenticity of Leo III's famous oath of compurgation, sometimes cited as a confession, was contested by Liutpold Wallach in his "The Genuine and Forged Oath of Pope Leo III," in *Diplomatic Studies in Latin and Greek Documents from the Carolingian Age* [orig. published in *Traditio* 11 (1955)] (Ithaca, N.Y., 1977), pp. 299–327 (esp. pp. 295–97). Wallach's arguments that the forms of expression used in Leo's oath of compurgation are so unnecessary or illogical that the text must be forged, however, lose force when one recognizes the similarity between Leo's oath of compurgation and the Carolingian formulae for oral confessions. See also Howard Adelson and Robert Baker, "The Oath of Purgation of Pope Leo III in 800," *Traditio* 8 (1952), 35–80; Walter Mohr, "Karl der Große, Leo III, und der römische Aufstand von 799," *Archivum latinistae mediæ ævi*, Bulletin Du Cange, 30 (1960), 39–98; Othmar Hageneder, "Das *crimen maiestatis*, der Prozeß gegen die Attentäter Papst Leos III, und die Kaiserkrönung Karls des Großen," in *Aus Kirche und Reich: Studien zu Theologie, Politik und Recht im Mittelalter: Festschrift für Friedrich Kempf zu seinem fünfundsiebzigsten Geburtstag und fünfzigjährigen Doktorjubiläum*, ed. Hubert Mordek (Sigmaringen, 1983), pp. 55–79. For a discussion of Leo's trial, at which Ebo of Rheims was present, and of Louis' confession, and of the historical irony that Ebo, who was among those responsible for Louis' penance, was subsequently forced by Louis to make his own confession, see Peter R. McKeon, "Archbishop Ebbo of Reims (816–835): A Study in the Carolingian Empire and Church," *Church History* 43 (1974), 437–47. More detailed and important discussion is in Jean Devisse, *Hincmar, Archevêque de Reims 845–882*, 2 vols (Geneva, 1975–76), 1:77–91. On Gottschalk, whose

dramatic mode of social and political interaction, a startling moment of autobiographical revelation in a culture that in general gave little formal priority to autobiography, or even to personal identity in its rites, literature, and art.³ In confession, however, the individual could step forward and declare to a rapt audience fully personal culpability, particular and original, a distinguishing condition that wrenched the confessant from the social and political, and even legal, web in which he or she was normally situated. Further exercises of mortification might seal the penitent's status, but the confession was the glowing, singular moment of declaring sinfulness and assuming responsibility for change. The relative brevity of its duration allowed it to be executed in almost any situation: upon a deathbed, in an assembly, to a cleric, inscribed on parchment, or spoken spontaneously with tears. The dramatic potential of the confessional moment inspired theatrical enhancements, and rituals for any almost any occasion came to be elaborated both in performance and liturgical prescription. Confession expressed spiritual conversion, realigned the community and the individual, and, if publicly enacted, provided public resolution of transgression.⁴ To understand Carolingian perspectives on the expiation of guilt, it is useful, therefore, to shift our gaze away from the gestures of atonement that have long fascinated scholars—the days spent fasting, the hours standing in icy streams with arms outstretched in the form of a cross, the years

confession, modelled on Augustine's *Confessions*, was a profession of belief, see Peter van Moos, "Gottshalks Gedicht *O mi custos: eine confessio*," *Frühmittelalterliche Studien* 4 (1970), 201–30; Wilfried Hartmann, "Die Mainzer Synod des Hrabanus Maurus," in *Hrabanus Maurus: Lehrer, Abt und Bischof*, ed. Raymund Kottje and Harald Zimmermann (Mainz and Wiesbaden, 1982); and Devise, *Hincmar*, 1:124–53. On Theutberga's confession, see Stuart Airlie, "Private Bodies and the Body Politic in the Divorce Case of Lothar II," *Past and Present* 161 (1998), 3–38; and on the confusion of "private" and "public" forms in its delivery, see Abigail Firey, *A Contrite Heart: Prosecution and Redemption in the Carolingian Empire* (Leiden, in press), ch. 1.

³ In the early medieval West, formal personhood was largely mapped onto legal status, social position, and the names shared by ancestors and relatives; it was generally effaced in artistic and literary production. The notion that a psychological sense of self as well was quite absent until the 11th and 12th centuries has recently been refuted by Barbara Rosenwein, "Y avait-il un 'moi' au haut Moyen Âge?" *Revue Historique* 307 (2005), 31–52, who notes that her examples "se rapprochent des expériences de «conversion»,” although she hopes to construct conceptual approaches "y compris celles qui ne tiennent compte ni... du sentiment intérieur de culpabilité" (45n., 42). For the connection between sense of self and confession, see Susan R. Kramer, "The Priest in the House of Conscience," *Viator* 37 (2006), 152–54 and the bibliography cited there.

⁴ Geoffrey Koziol, *Begging Pardon and Favor: Ritual and Political Order in Early Medieval France* (Ithaca, N.Y., 1992), pp. 204–07, et passim.

wandering in exile from home and family—and to turn to Carolingian interest in confession, the crucial demonstration to God and man of conversion, and a penitential exercise in its own right, entailing shame, sorrow, and pain.⁵

Penitential confessions did not merely acknowledge actions or intentions; they were expressions of moral knowledge. The expanding range of occasions on which Carolingians selected confession as a solution to tension or disorder thus transformed the landscape of moral authority in the Carolingian realms. This essay proposes that the imagery and arguments that accrued in the Carolingian discourse surrounding confession had considerable impact on both pastoral and legal concepts of moral authority in the medieval West. On one hand, it appears that in the Carolingian period, the individual conscience gained recognition as a sanctified agent of judgement. On the other hand, it seems that such a gain in moral autonomy was matched by new mechanisms for the investigation and prosecution of offenses that advanced the claims of the community over the individual. Both the contours of the discourse and the implementation of judicial procedures that drew upon or responded to that discourse for legal principles are here considered.

The Carolingian model of confession was complex and often ambiguous in its significance, qualities that are reflected in the many literary tropes that Carolingians used to explain what confession should accomplish.

⁵ Much previous scholarship has been concerned with early medieval penance, especially as represented in the evidence of the generally short tracts prescribing specific penances for specific sins, known as “penitentials.” See the essay in this volume by Rob Meens for detailed exposition of the historiographic debates over the significance of these early medieval texts. Nuanced discussion of the institutional contexts in which some penitentials may be situated is in Ludger Körntgen, *Studien zu den Quellen der frühmittelalterlichen Bussbücher*, Quellen und Forschungen zum Recht im Mittelalter (Sigmaringen, 1993), pp. 64–72, 76–80, 160–68. Readings of the penitentials have been affected by the competing analyses of penance as a “judicial weapon” or a “pastoral practice,” a dispute noted by Sarah Hamilton, *The Practice of Penance, 900–1050*, Royal Historical Society Studies in History (Woodbridge, Suffolk and Rochester, 2001), p. 21. For recent discussions of whether the penitentials were primarily for use in episcopal sees or parish churches, see the arguments of Franz Kerff, “*Libri paenitentiales* und kirchliche Strafgerichtsbarkeit bis zum Decretum Gratiani: ein Diskussionsversuch,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung* 75 (1989), 23–57; and Rob Meens, “The Frequency and Nature of Early Medieval Penance,” in *Handling Sin: Confession in the Middle Ages*, ed. Peter Biller and Alastair Minnis (Woodbridge, Suffolk, Rochester, 1998), pp. 35–61. For all the scholarly attention to the penitentials as artifacts signifying the importance of penitential activities, there are few references outside the penitentials either to the prescription or performance of such penances. There are, however, descriptions of confessions.

Carolingians, much as do moderns, saw confession as having both therapeutic and legal value. That potentially dual function gave confession force in both religious and secular spheres and entwined the processes of spiritual rehabilitation and social prosecution. The study of Carolingian expectations for confessions illuminates how religious objectives were incorporated into law and how juridical traditions shaped pastoral discourse. The integration of the religious and legal purposes in Carolingian legal proceedings shifted analysis from the parsing of physical evidence, such as was done in Roman law, to a therapeutic model that probed the interior condition of the culprit's psyche.⁶ Hence, those ministering to the confessant were especially interested in the extent of the shame surrounding the sinner's approach to confession, the fear of God motivating the confession, and the identification of the specific vices that had corrupted the soul in need of healing.

The role of Alcuin, Charlemagne's most prominent clerical advisor, in the dissemination of ideas about the spiritual importance of penitential confession is noteworthy, for it suggests that it was at the imperial court that both clerics and laity found a coalescing design for confessional practices.⁷ In the later 790s, Alcuin composed a little treatise, known under the title of its address to the novices in the abbey of St Martin in Tours (*Ad pueros Sancti Martini*), that supplies some information about Carolingian penitential theory and practice that the penitentials proper do not.⁸ The work was widely circulated, and it is suggested that it

⁶ A puzzle for legal historians has been the changing status of confession in courts of law. In classical Roman law, confessions had little standing, but by the 13th century, a confession was "the queen of proofs." See Raoul C. van Caenegem, "La preuve dans le droit du moyen âge occidental: rapport de synthèse," in Société Jean Bodin pour l'histoire comparative des institutions, *La preuve. Moyen âge et temps modernes, Deuxième partie* (Brussels, 1965), p. 735. The present essay suggests that the changing significance of confession during the Carolingian era may help to account for the altered status of confession in legal proceedings.

⁷ On Alcuin's interest in penance, see Michael S. Driscoll, *Alcuin et la pénitence à l'époque carolingienne*, Liturgiewissenschaftliche Quellen und Forschungen (Münster, 1999). On the role of Alcuin as an imperial propagandist and pre-eminent theological voice at the Carolingian court, and on the dissemination of his ideas among the cohort attached to the palace, see Mary Alberi, *Charlemagne's Court Poets and Imperialism* (Ph.D. diss., State University of New York at Binghamton, 1980); see also Peter Godman, ed., *Poetry of the Carolingian Renaissance*.

⁸ See Michael S. Driscoll, "Ad Pueros Sancti Martini: A Critical Edition, English Translation, and Study of the Manuscript Transmission," *Traditio* 53 (1998), 37–61. This article corrects and enhances the edition offered in "Epistola 131," ed. Ernst Dümmler, *Monumenta Germaniae Historica* [hereafter MGH], *Epistolae*, 4 (Karolini aevi 2) (Berlin, 1895), pp. 193–98.

influenced the imperially directed Church councils held in 813 that historians have long taken as a landmark in the history of penance.⁹ *Ad pueros Sancti Martini*, although formally directed to the education of the novices of the church bestowed upon Alcuin in 796 by Charlemagne as his benefice, soon circulated as part of the devotional literature supplied to lay prelates by the bishops who ministered to them. In this context, it is important evidence for the promotion of aural confession of sins by the laity.¹⁰ Surviving Carolingian manuscripts transmit the text in conjunction with other works by Alcuin for private study of the penitential psalms and on the virtues and vices, the last a text dedicated to the lay magnate Wido.¹¹ Alcuin also sent another bundle of penitential expositions to bishop Arno of Salzburg, in response to a request for materials with which to instruct the laity.¹²

Several of the crucial tropes in penitential discourse that reveal Carolingian ambitions for the use of confession as both a pastoral and judicial event seem to have been developed in Alcuin's writings. Alcuin's description of the confessional process in *Ad pueros* is noteworthy for its clear and ripened imagery depicting confession as both medical and juridical.¹³ These metaphors distill ideas about a situation of grave necessity, one in which the sinner is compelled to withstand the ministrations of someone with superior expertise or office if he or she is to live, a situation that might be either medical or judicial. The images cascade in consecutive explanations: "Declare your sins in confession,

⁹ Driscoll, "Ad Pueros," p. 39n. Driscoll points to the expression of blushing before the priest as a noteworthy point of correspondence between the conciliar *acta* and Alcuin's *Ad pueros*.

¹⁰ For discussion of the date of composition and dissemination, see Donald Bullough, *Alcuin: Achievement and Reputation* (Leiden and Boston, 2004), pp. 66–67, where it is argued that the text was not written for the young men of Alcuin's own monastery but was one of Alcuin's earlier compositions that gained popularity after he sent it to Arno of Salzburg.

¹¹ Driscoll, "Ad Pueros," pp. 42–47; Driscoll, *Alcuin et la Pénitence*, pp. 181–84. On Alcuin's *Enchiridion in Psalmos poenitentialis* and *de virtutibus et vitiis*, see Marie-Hélène Jullien and Françoise Perelman, *Clavis des auteurs latins du Moyen Âge: territoire français, 735–987*, vol. 2, *Alcuin* (Turnhout, 1999), pp. 168–70, 154–59 for manuscripts and bibliography.

¹² Donald Bullough, "Alcuin and the Kingdom of Heaven: Liturgy, Theology and the Carolingian Age," in *Carolingian Essays*, ed. Uta-Renate Blumenthal (Washington, D.C., 1983), pp. 16 n.33, 20 n.41.

¹³ A chart showing the equal balance of medical and juridical terms used in *Ad pueros*, and also the frequency of terms referring to interiority, is in Driscoll, *Alcuin et la Pénitence*, p. 157, along with discussion of the scriptural and patristic background of the images.

before you feel the wrath of the judge”;¹⁴ “O, exceptional favor of the singularly most merciful judge!”;¹⁵ “Then indeed you will be able to obtain the perfected benefit of medicine, if you do not hide from the physician the wounds of conscience. I opine, indeed, that unless a physician intervenes, the sick person will not be healed. Confession is the medicine for your wounds, and the certain aid for your salvation.”¹⁶ Alcuin’s interchangeable images of the judge and physician reflect his concept of the hidden nature of sin, which God, an omniscient judge and healer, sees and which should be revealed to humans for judgement and ministration.¹⁷ As he wrote in *Ad pueros*,

Open the secret place of your iniquity through confession. What you have done in secret is known to God. If the tongue does not avow them [sins], your conscience will not be able to conceal them. You believe in vain that your sins are hidden within walls. Even if you can avoid human eyes when you sin, still nothing you do in secret can escape God’s gaze. . . . He wants to receive from sinners the gift of confession, only in order that He will not find in them what He has to punish.¹⁸

Alcuin’s elaboration of medical and judicial metaphors extends to the keen sense of shame that revealing sin to another evokes. Exhorting the reader to reveal to God all that one thinks hidden, Alcuin assures, “Believe me, all that you have sinfully done will be forgiven if you do not blush to confess and you take care to purge through penance.”¹⁹ Citing the model of the penitent David, he explains that, especially to a sinner terrified by the magnitude of his wrongdoing, it is important to recall the need for the medicine of confession, “lest you perish in the putrefaction of wounds, if you blush to reveal the manifold pains of ulcers.”²⁰ In the treatise’s final injunction to hasten to the medicaments

¹⁴ *Dic per confessionem peccata, antequam iudicis iracundum sentias* (Driscoll, “*Ad Pueros*,” p. 30).

¹⁵ *O singulare clementissimi iudicis beneficium!* (Driscoll, “*Ad Pueros*,” pp. 50, 51).

¹⁶ *Tunc enim poteris perfectum consequi beneficium medicinae, si non celes medico tuae vulnera conscientiae. Opinor enim, nisi interpelletur medicus, non curatur aegrotus. Confessio tua medicina est vulnerum tuorum, et salutis tuae certissimum subsidium* (Driscoll, “*Ad Pueros*,” p. 52).

¹⁷ The rhetorical images of medical care and judicial process are not only frequent in Alcuin’s writings but also are almost invariably paired. See Driscoll, *Alcuin et la Pénitence*, pp. 129, 151–61.

¹⁸ Driscoll, “*Ad Pueros*,” pp. 50, 51.

¹⁹ Driscoll, “*Ad Pueros*,” p. 50.

²⁰ Driscoll, “*Ad Pueros*,” pp. 52, 54. Driscoll offers the effective “lest you rot in the gangrene of your wounds, if you blush to reveal to the doctor the multiple aches of your ulcers” (p. 55).

of confession, Alcuin warns again, “if one blushes now to confess his sins and emend his ways through penance, the malign accuser [previously identified as the devil] will charge his soul, the accuser who earlier had suggested to him that he should sin, if we have failed to appear before the judge in confession.”²¹ Thus, the use of medical and juridical imagery reinforces the claim that shame is the salient and inevitable experience of the confessant.

Alcuin’s attention to the sinner’s shame, his exhortations to fear God, and his enthusiasm for psychomachiac analysis show his fascination with the interior workings of the individual.²² Indeed, these inner motions provided for Alcuin and his contemporaries a subjective frame for moral analysis that had both flexibilities and possibilities beyond the objective determination of culpability known in secular legal systems.²³ In this religiously inflected analysis of culpability, intention and the internal impetus to sin were drawn into the account in ways usually unrecognized in secular law. Furthermore, the process of correction and punishment also became linked to the psychic response of the culprit: an entire emotional narrative develops, in which remorse (still a factor in determining sentences in many western legal systems) is the necessary conclusion. The precursor to remorse, shame, seemed to Carolingian theorists of penance a particularly dangerous phase in conversion, for it might propel the sinner toward reform, or it might impel concealment of the sin. Recognising the internal crisis and social complications for the sinner feeling shame, and knowing that it might be so great as to deter the culprit from the critical act of confession, authors of penitential literature developed encouraging arguments: “how will the doctor make you well if you blush to uncover the sore?”²⁴ “Whenever

²¹ *Si nunc erubescit confiteri peccata sua et per paenitentiam emendari, stabit accusator malignus contra eam [animam], qui quondam suggestit illi, ut peccaret, si nos neglexerimus praevinire faciem iudicis in confessione* (Driscoll, “*Ad Pueros*,” p. 60).

²² In this, I disagree with Driscoll, who even while remarking upon the number of terms pertaining to interiority perceives “le manque de termes sentimentaux ou psychologiques,” and includes the three references to blushing in the short *Ad pueros* as indicating that absence. Driscoll, “*Ad Pueros*,” p. 157 n.

²³ The question of subjective analysis in law is, of course, central to the work of Michel Foucault and his many successors. A succinct review of the implications of Foucault’s work for the study of medieval pastoral care is in Beatriz MacDowell, “Aux origines du pouvoir pastoral,” *Studia Monastica* 41 (1999), 11–33.

²⁴ Alcuin, *De virtutibus et vitiis* (*Patrologiae cursus completus. Series Latina*, ed. J.-P. Migne [Paris, 1844–91] [hereafter PL] 101:621): “Quomodo potest medicus vulnus sanare, quod aegrotus ostendere erubescit?” *Idem*: “Quin immo tanto magis insistendum est

we humbly confess our sins, the devil has no power to charge us with them in that great Judgement of our lives.”²⁵ A frequent theme was that it was better to confess in this life before men than at the Last Judgement before God.²⁶ It was at the point of shame, an inherently social sentiment, that others entered into the penitential process. The keen interest in shame, described by medieval authors by its physiological manifestation of blushing, had the curious effect of orienting judicial assessment around the pain of the culprit, rather than the pain of the offended, and thus directed ideas about atonement toward rehabilitation rather than retribution.²⁷

tibi, o peccator, in medicina confessionis, ne pereas in putredine vulnerum, si medico erubescas aperire multiplices ulcerum dolores” (Driscoll, “*Ad Pueros*,” p. 54).

²⁵ Alcuin, “Quaecumque enim humiliter confitemur in nostris peccatis, nihil horum diabolus habet potestatem nobis obicere in illo tremendo iudicio nostrae vitae” (Driscoll, “*Ad Pueros*,” p. 60); “Datur nobis a benignissimo iudice locus accusandi nosmetipsos in peccatis nostris coram sacerdote Dei, ne iterum accuset nos in eis diabolus coram iudice Christo” (Driscoll, “*Ad Pueros*,” p. 52). Cp. Theodulf of Orleans, *Capitularia*, a text circulated among a number of bishops: “Dolet diabolus quando confitetur peccata sua, et desiderat nos celare quae fecimus: quia qui se ipsum accusat in peccatis suis, hunc diabolus non habet iterum accusare in die iudicii...” [The devil grieves when one confesses one’s sins, and desires that we hide what we have done, because once one has accused oneself of one’s sins, the devil cannot make the accusation again on the Day of Judgement] (PL 105:217–18).

²⁶ See, for example, the text of the confession ascribed to Theutberga: “quia tolerabilius est mihi imprudenti ac deceptae feminae coram hominibus culpam simpliciter confiteri quam ante tribunal domini erubescere atque aeternum vae habere” [because it is more tolerable to me, an imprudent and deceived woman, to confess with simplicity before men than to blush before the tribunal of the Lord and have eternal woe] (Hincmar of Rheims, *De Divortio Lotharii Regis et Theutberga Reginae*, ed. Letha Böhringer, MGH, Concilia, Tomus IV, Supplementum I [Hannover, 1992], p. 121).

²⁷ The pre-eminent theoretical framework for the transformation of the purpose of punishment was supplied by Michel Foucault, *Surveiller et punir: Naissance de la prison*, translated into English as *Discipline and Punish: The birth of the prison*, trans. Alan Sheridan (1975; 2nd ed. trans. New York, 1995); see esp. pp. 250–56, 269–72, 298–304 on the organized examination of the individual as a central element in the project of rehabilitation. More recent, and focusing on confession as the avenue allowing such examination, is Peter Brooks, *Troubling Confessions: Speaking Guilt in Law and Literature* (Chicago, 2000). In his discussion of the place of confession in modern American criminal legal processes, Brooks points out that courts face competing narratives from victims and culprits depicted as victims, wherein “painful hidden stories—replete with an element of shame that has kept them hidden—...demand a sympathetic, transference listening. Yet in the context of the law, where their confessional status is also aggressive and accusatory, they may be dangerously problematic.... In a contemporary American culture characterized by confessional discourse and multifarious therapeutic practice, a high value has come to be placed on speaking confessionally, and along with this a belief that confession is therapeutic...” (pp. 139–40). Brooks sees modern confessional phenomena as rooted in medieval religious practices, but only as described in 1215 at the Fourth Lateran Council and subsequently; he follows the standard account that it

The excavation of the soul in judicial evaluation of a situation altered the expectations of both the judging and the prosecuted (or investigated) with regard to the weight of conscience in assessing culpability. On the one hand, guilt became more firmly ascribed to the shape of one's character; that ascription potentially affected perceptions of the likelihood of recidivism, as tendencies toward vice were etched in one's very constitution. On the other hand, the increased value attached to the condition of the soul also raised the status of the individual conscience as a moral arbiter. While much scholarship has pursued the appeal to conscience as a mode of political resistance in the early modern period, there has been little attention given to early medieval ideas about the expanding role of conscience in penitential and judicial arbitration.²⁸ Yet early medieval texts show a fairly well-developed discourse regarding conscience.

was in response to the abolition by the Council of the ordeal that confession supplied the necessary standard of proof for conviction (p. 15).

²⁸ The quantity of scholarly literature on conscience in the early modern period is too vast to list, especially in the wake of major studies that framed the issue in the context of social control over the individual, notably those of Thomas N. Tentler, *Sin and Confession on the Eve of the Reformation* (Princeton, 1977); and Jean Delumeau, *Sin and Fear: The Emergence of a Western Guilt Culture, 13th–18th Centuries* (New York, 1990). Recent studies examining anew the relation between confession and social control in the early modern period are Ronald K. Rittgers, *The Reformation of the Keys: Confession, Conscience, and Authority in Sixteenth-Century Germany* (Cambridge, Mass., and London, 2004); and Wietse de Boer, *The Conquest of the Soul: Confession, Discipline, and Public Order in Counter-Reformation Milan*, *Studies in Medieval and Reformation Thought* (Leiden and Boston, 2001). For a range of perspectives on conscience in the early modern period with special attention to legal implications, see the collection of essays *Conscience and Casuistry in Early Modern Europe*, ed. Edmund Leites, *Ideas in Context* (Cambridge, New York, and Paris, 1988); especially relevant to this essay is that by John Bossy, "Moral Arithmetic: Seven Sins into Ten Commandments," which argues that the change in teaching the moral system from a catechesis of the capital sins to the decalogue in the 16th century altered significantly the terms of Christian ethics and obedience. Also focusing on early modern religious education as the context for understanding lay views on conscience is Lacey Baldwin Smith, "A Matter of Conscience," in *Action and Conviction in Early Modern Europe: Essays in Memory of E. H. Harbison*, ed. Theodore K. Rabb and Jerrold E. Seigel (Princeton, 1969), pp. 32–51, a study of the political and social implications of the appeals to conscience made by Henry VIII in his decision to divorce Catherine, including his remark, "Though the law of every man's conscience be but a private court, yet it is the highest and supreme court for judgment or justice" (cit. p. 35). For the impact of Lutheran views of conscience on early modern legal thought, see Harold Berman and John Witte, Jr., "The Transformation of Western Legal Philosophy in Lutheran Germany," *Southern California Law Review* 62 (1989), 1575–1660. For the medieval period, a slim study was published by Marie-Dominique Chenu, *L'éveil de la conscience dans la civilisation médiévale* (Montréal, 1969); in this work, Chenu was deeply committed to the notion that "the individual" and "interiority" were largely innovative

A notable aspect of that discourse is the prevalence of juridical tropes. Often conscience is described as a witness that can testify regarding the guilt or innocence of the person to whom it belongs.²⁹ This description is directly related to the fundamental precept that only God, and not men, can see into the conscience.³⁰ From that precept there followed one of the central principles of canon law: that the Church does not

constructs of the 13th century, and he dismisses earlier precedents, although he seems to have known only Augustine and the Benedictine Rule as early medieval texts.

²⁹ See, e.g., Christianus Stavelot (also known as Christianus Druthmarus, a monk of Corbie and Stablo, d. c.880): “at that time [of Last Judgement] there will be no excusing through words, because the judge who will accuse in the courts will see both the interior and the exterior and the witness, our conscience, will not dare to say anything” [*In tempore illo non erit ulli excusatio verborum, quia iudex qui foris increpabit, et interius et exterius videbit, et testis nostra conscientia aliud dicere non audebit*] (Christianus Stavelot, “Expositio in Mattheum Evangelistam,” in PL 106:1441A); Hrabanus Maurus (c.780–856, abbot of Fulda): “Indeed this ‘conscience,’ because it reprehends, is not reprehended, and because it judges a man, it is not judged, as John says, ‘If our conscience does not reprove us, we are faithful to God’” [*haec enim conscientia... quia reprehendat, non reprehendatur, et iudicet hominem, non ipsa iudicetur, sicut ait Johannes, Si conscientia, inquit, nostra non reprehendat nos, fiduciam habemus ad Deum* (1 Iohan 3)] (*Enarrationum in epistolas beati Pauli libri triginta, Lib. II*, in PL 111:27D); Haimo of Halberstat: “Indeed the conscience of each one of us is a witness” [*Unicuique enim nostrum sua conscientia testis est*] (“Homiliae de Tempore, Hom. III [Dominica Tertia Adventus],” in PL 118:30A, quoting a phrase from John Cassian, also quoted in Haimo’s Hom. 110 [Dominica secunda post Pentecosten]); Walafrid Strabo: “‘Testimony,’ that is, conscience is not tormenting, but bearing witness” [*Testimonium, id est conscientia non remordens, sed testificans*] (“Comm. Epistola II Ad Corinthios,” in PL 114:551D); see also his reference to “the testimony of the angels, the saints, and our own conscience” cit. below, n. 33. These last authors were following 2 Cor 1:12: “For our glory is this, the testimony of our conscience, that in simplicity of heart and with the sincerity of God, we have treated you not in the ways of worldly wisdom, but in the grace of God...”

³⁰ Of the many articulations of this concept, among the most pertinent for this study is Alcuin’s statement, “All things which we treat as hidden are known to the Lord; the thing the tongue has not spoken, conscience is not able to conceal. Every thing which is hidden is clear to God...” etc. (“Epistola 241, Ad Gundradam [Eulaliam],” in MGH, *Epistolae*, 4 (Karolini aevi 2), pp. 386–87). Hrabanus Maurus: “what is ‘in secret’ except within a good conscience, which cannot be seen by human eyes, nor made clear in words? ... If you expect a reward from Him who is the only observer of the conscience, let that conscience suffice to you as the promised reward” [*quid est in abscondito, nisi in ipsa bona conscientia, quae humanis oculis demonstrari non potest, nec verbis aperiri? Si enim praemium ab eo exspectas qui conscientiae solus inspector est, sufficiat tibi ad promerendum praemium ipsa conscientia*] (Hrabanus Maurus, “De universo,” in PL 111:1273–74, quoting Augustine, *On the Sermon on the Mount*, II.9). On the exploration of the relation between a seeing God and a witnessing conscience by Theodoret, bishop of Cyrrhus in the 5th century, see Philip Rousseau, “Knowing Theodoret: Text and Self,” in *The Cultural Turn in Late Ancient Studies: Gender, Asceticism, and Historiography*, ed. Dale B. Martin and Patricia Cox Miller (Durham and London, 2005), pp. 278–97, esp. 285.

adjudicate what is hidden.³¹ While the intent was to ensure that the earthly institution of the Church did not usurp jurisdiction that was properly unique to God, the principle *non occulta iudicat* also had far-reaching implications for the administration of penance. Judgement was limited to what was revealed, and the distinction between secret and public conditions became the boundary between the correction voluntarily undertaken by confessing sinner in the rites of secret confession and penance and the public corrections undertaken by ecclesiastical courts. When there were no human witnesses to a sin, only conscience could testify; the concept inheres in the later medieval term for the confessional, “the court of conscience.”³²

The role of conscience varied, however. Other tropes used by early medieval writers situated conscience in its court as the accuser.³³ In this image, conscience not only knew of guilt, but also had the moral capacity to act against the perpetrator. Alcuin is among the authors using this trope.³⁴ The varied traditions regarding the role of conscience

³¹ Cf. Stephan Kuttner, “Ecclesia de occultis non iudicat,” in *Acta Congressus Iuridici Internationalis... Romae... 1931*, 5 vols (Rome, 1935–37), 3:225–46.

³² On the “court of conscience,” also known as the “internal forum,” see Joseph Goering, “The Internal Forum and the Literature of Penance and Confession,” *Traditio* 59 (2004), 175–227.

³³ “Because even if conscience accused us within and wished that God were hidden,...nevertheless we could not hide from God” [*quia etiamsi conscientia accusaret nos intus et vellet latere Deum... tamen non occultare Deo possemus*] (Walafrid Strabo, “Comm. in Epistola I Beatis Iohannis,” in PL 114:700D); “What witness can the angels, saints, and our own conscience bear against them?” [*Quid ergo illi contra quos perhibent testimonium angeli, et sancti, et propria conscientia?*]...] and “We have a good conscience, that is, conscience does not accuse us...” [*Bonam conscientiam habemus, id est, conscientia nos non accusat...*] (Walafrid Strabo, “Comm. in Epistola Ad Hebreos,” in PL 114:662C, 670C); “...those who, despising God, also are condemned in his judgement with their own consciences accusing them” [*qui Deum contemnentes et ante iudicium ejus propria conscientia se accusante condemnantur*] (Hrabanus Maurus, “Expositio in Proverbia Salomonis,” II.11, in PL 111:716B, quoting Bede); “and the earth shall burn, when the heart of the sinner is set afire because conscience accuses him, and he shall be consumed in the sorrow of penance” [*et terra ardet, quando accusante se conscientia cor peccatoris uritur, atque in dolore poenitentiae crematur*] (Hrabanus Maurus, “Commentaria in Ezechielem,” in PL 110:522C, quoting Gregory the Great).

³⁴ “Of all my sins of which my conscience may accuse me, may you allow me to make a pure confession before you” [*de omnibus peccatis meis de quibus me mea conscientia accusat, puram mihi coram te concedas agere confessionem*] (Alcuin, “Confessio Peccatorum Pura [Feria II],” in *Officia per Ferias*, in PL 101:524C); see also Pseudo-Alcuin, “Lord, forgive the sins of those confessing to you, that the indulgence of your mercy may absolve those things the charge of conscience accuses [us of doing]” [*Domine... confitentium tibi parce peccatis; ut quos conscientiae reatus accusat, indulgentia tuae miserationis absolvat*] (“De Divinis Officiis Liber,” in PL 101:1281, echoing the Gelasian Sacramentary and Gregory

in an internal court, however, produced more complex images of the personnel, and some authors cast conscience as the accuser and thoughts as the advocate for the defense, or conscience as a witness, and thoughts as both prosecutors and defenders.³⁵ In one of the most vivid depictions, preserved in texts that seem to reflect transmission at the parochial level, “a court is constituted in the heart, his thought is accuser, conscience a witness, fear an executioner.”³⁶

Other images attached to conscience illuminate the rich penitential discourse of the early Middle Ages. Some authors present conscience as a painful goad, the thorns or sword that prick the sinner; again, the idea is that conscience is the moral agent insisting upon righteousness.³⁷ The incorruptibility of conscience, however, is questioned by other writers, who perceive it as an inner element that, like the soul, or perhaps when equated to the soul, can be damaged, corrupted, cleaned, purged, or glorified. Such notions, like the other claims regarding the role of conscience, revolve around its dynamism, but shape the dynamism as passive, rather than active: conscience is subject to the actions of the

the Great. Use of the image in prayers disseminated the concept to a potentially wide audience).

³⁵ ...*miseram accusantes invicem conscientiam, cogitationes autem defendentes* (Paschasius Radbertus, “In threnos sive lamentationes Ieremiae libri quinque,” I “beth,” in PL 120:1068D); *quaedam notae malarum aut bonarum cogitationum figuntur in mente et conscientia nostra, quae aut accusabunt, aut certe defendent nos...* (Haimo of Halberstat, “In divi Pauli epistolae expositio, in Epistolam ad Romanos,” cap. 2, PL 117:381C); see next note as well.

³⁶ *In corde suo constituo iudicio adsit accusatrix eius cogitatio, testis conscientia, carnifex timor...* (Grimlaicus presbiter, “Textus Regulae,” cap. 24, PL 103:607B; also Halitgar of Cambrai, “De vitiis et virtutibus et de ordine poenitentium [Praefatio],” in PL 105:656, quoting Augustine, “de utilitate agenda poenitentiae,” Sermo 351, cap. 4). Augustine’s sermon was the source for much of the *Praefatio* of the *Collectio Dacheriana*, one of the most widely used reference works of canon law for Carolingians.

³⁷ “What indeed is the thorn which is transfixed, but the prick of the conscience of the sinner?” [*Quid est autem spina quae configitur, nisi stimulus conscientiae peccatricis?*] (Alcuin, “Enchiridion [seu Expositio] in Psalmos poenitentiales [Ps. 31],” in PL 100:577C); “The fourth [species of prayer pertains] to those who, once the punishing thorn of conscience was pressed from their hearts...” [... *quarta ad illos qui, iam poenalis conscientiae spina de cordibus pulsa...*] (Hrabanus Maurus, *De institutione clericorum / Über die Unterweisung der Geistlichen [Lateinisch-Deutsch]*, ed. and trans. Detlev Zimpel, Fontes Christiani, 61 [Turnhout, 2006], 2:13 (vol. 2:270); “...as if impaled by the sword of conscience...” [... *et quasi gladio pungitur conscientiae...*] (Hrabanus Maurus, “Expositio in Proverbia Salomonis,” Lib. II, cap. 12, PL 111:721D). Authors were no doubt influenced by the verse in Proverbs 12:18, “There is that promiseth, and is pricked as it were with a sword of conscience: but the tongue of the wise is health” [*Est qui promittit et quasi gladio pungitur conscientiae lingua autem sapientium sanitas est*], a verse expounded upon by Jerome, Augustine, and Hrabanus Maurus.

sinner, rather than having dominion over the sinner. Another image known to early medieval writers that retains the passivity of conscience without reducing its importance is the image of conscience as a house, or a place to which one returns, an interior space.³⁸ This rather surprising conceit, which offers a domestic rather than a judicial space as the site for maintenance of the Christian life, had a long life in medieval penitential literature. Originally described by Augustine, it gained force in the scholastic texts studied at medieval universities. The image was part of a subtle debate over priestly authority, for its very form raised the implicit question, who could enter the house of conscience? Was it a private space, reserved to the sinner and God alone? Or were the ministers of the Church present?³⁹

While the house had an ambiguous designation of space with regard to privacy, another image supplied meanings that were both linked to divine judgement and capable of encompassing variable conditions of privacy and revelation: conscience was sometimes described as a book in which sins could be recorded and which, although perhaps at present a sealed testimony, would be opened at the last judgement for the verdict of God.⁴⁰ The testimony in the book opened at the apocalypse was an image from the scripture of Daniel (Daniel 7: *judicium constituit et libri aperti sunt*) that Bede had elucidated as referring to conscience: “Those

³⁸ “...and when he enters the house of conscience, if he finds what is good in it, he will absolve all...” [*atque domum conscientiae cum intraverit, si quid boni in ea invenerit, cuncta deperdat...*] (Haimo of Halberstat, “Ennarratio in duodecim prophetas minores (in Joel),” cap. 2, PL 117:101D); “that the house of conscience may be cleaned; the house is cleaned, moreover, that Christ, entering into it, may find it clean” [*ut mundetur domus conscientiae; mundetur autem domus, ut Christus introiens eam, mundam inveniat*] (Leidrad of Lyon, “Liber de sacramento baptismi ad Carolum magnum imperatorem,” in PL 99:858D); “she considers the ways of her house, because she investigates in detail all the thoughts of his conscience” [*Semitas domus suae considerat, quia cunctas suae conscientiae cogitationes subtiliter investigat*] (commenting on Prov 31:27, Hrabanus Maurus, “Expositio in Proverbia Salomonis,” cap. 31, col. 790A, quoting Bede). On the verse “Diverse weights and diverse measures are an abomination to the Lord” (Prov. 20:10). Hrabanus offers the spiritual allegory, “and we should not have diverse measures in the house of our conscience” [*nec in domo conscientiae nostrae mensuras duplices habeamus*] (“Ennarratio super Deuteronomium liber quatuor,” III.21, PL 108:945C). On returning to conscience, see Bede: “It is necessary that we return regularly to our conscience that we may explore our works together with our thoughts...” [*Necesse est ut ad conscientiam nostram reversi solerter opera nostra simul et cogitationes exploremus*] (“Expositio in Marcum Evangelium,” I.2, PL 92:148D, quoted by Hrabanus Maurus in his commentary on Matthew, III.9).

³⁹ These issues are discussed by Kramer, “Priest in the House of Conscience,” pp. 149–66.

⁴⁰ For superb explication and exploration of this imagery, see Eric Jager, *The Book of the Heart* (Chicago, 2000).

who interpret the open books above as the consciences of each and the works laid bare seem to me to speak rightly.”⁴¹ That reading was shared by Hrabanus, who wrote at some length about the tribunal of the celestial judgement, when Christ will look into the hearts and consciences of every individual and make clear what is hidden and reveal what is concealed.⁴² The books of the heart, the notes inscribed on the tablets of conscience, will be read by the angels of the apocalypse, according both to Hrabanus and the great apocalypticist Haimo of Halberstat.⁴³ Quoting Jerome’s commentary on Daniel, the archdeacon Peter, writing to Charlemagne, explained that the opened books of Daniel 7:10 meant that the consciences and acts of each person, whether good or bad, would be revealed. There would be the good book, the book of the living; the bad book was an earthly book held in the hand of the accuser.⁴⁴ The written record of sin delivered to God was reified in

⁴¹ *Unde mihi rectius dicere videntur, qui supra libros apertos conscientias singulorum et opera patefacta interpretantur* (Bede, “Explanatio Apocalypsis,” III.20, PL 93:194B).

⁴² *...introspicere corda et conscientias singulorum, manifestare occulta et obiecta revelare...* (Hrabanus Maurus, *Enarrationum in epistolas beati Pauli libri triginta*, Lib. II, VII.14, PL 111:1580A–1581B).

⁴³ “And these, just like transcribed books, or incised tablets containing in their letters our thoughts and deeds, may be read by every rational creature, as we would say. This is what I judge to be indicated in Daniel, where it says, ‘and the books were opened’ (Dan 7:10), namely those which are wrapped up and shrouded in our hearts, containing certain writings which we generated and with certain notes engraved in conscience, and none of these things were known except to God alone. There these books of our soul or pages of our heart will be opened in the sight of the flaming throne, and of the wheels of blazing fires, and of the rivers of fire running before the Ancient of Days. Even the angels will see and read these things, and the thousand thousands of angels...” [*et tanquam libri quidam descripti, vel tabulae incisae continentes litteras actuum cogitationumque nostrarum ab omni, ut diximus, creatura rationabili relegentur; et hoc est quod arbitror indicari per Daniele, ubi dicit, “et libri aperti sunt,” qui scilicet et in corde nostro involuti sunt et obiecti, continentes quidem scripta quae gerimus et notis quibusdam conscientiae sulcati, nec tamen ulli nisi Deo soli cogniti. Isti ergo libri animae nostrae vel cordis nostri paginae aperientur in conspectu throni flammei, et rotarum ignis ardentis, et fluminis ignei percurrentis ante vetustum dierum. Videbunt haec et legent etiam angeli, et illa millies millia angelorum...*] (Hrabanus Maurus, *Enarrationum in epistolas beati Pauli libri triginta*, Lib. II, VII.14, PL 111:1581A). “For that the books signify the hearts of men and conscience is witnessed by Daniel, who said, ‘The Ancient of Days sits, and the books are opened’” (Haimo of Halberstat, “Expositio in Apocalypsin beatis Iohannis libri septem,” I.1, PL 117:951A). Cf. Julian of Toledo, *In prognosticon futuri saeculi*.

⁴⁴ *Quid est iudicium sedit et libri aperti sunt (Dan. VII, 10)? Conscientiae et opera singulorum in utraque parte vel bona vel mala omnia revelantur. Bonus liber ille est, quem saepe legimus, liber viventium; malus liber, qualis est qui in accusatoris tenetur manu, qui est inimicus et vindex de quo et in Apocalypsi legimus: Accusator fratrum nostrorum (Apoc. XII, 10), liber iste terrenus est (Petrus archidiaconus, “Liber de diversis quaestiunculis cum responsionibus suis,” in PL 96:1354A–B).*

some Carolingian rituals of confession, in which the confessant placed a written confession on the altar.⁴⁵

A number of the persistent tropes in the Carolingian discourse about conscience can be traced to the writings of Bede. Hrabanus Maurus drew frequently from Bede's texts in this regard. The simile of the house to which one returns for inspection, used by Bede in his treatise "On the Temple", appears *verbatim* in Hrabanus's commentary on the biblical books he knew as Kings, and also was cited by two other Carolingian authors commenting on Kings, the bishop Claudius of Turin and the monk Angelomus of Luxeuil.⁴⁶ It may have been Bede's representation of conscience as a place to which one returns that inspired Hrabanus' discussion of those who "are called back within to conscience, so that they may first correct their own [sins], and then reprehend another."⁴⁷ The pangs of conscience, depicted by Bede as sword wounds, are similarly described by Hrabanus.⁴⁸ The juridical images used by Hrabanus of the accusing conscience and the conscience that is judged by God and that cannot be hidden may also be traced to Bede.⁴⁹

Not only Hrabanus but also Alcuin drew upon the works of Bede and cited his compatriot's references to conscience, although Alcuin

⁴⁵ Koziol, *Begging Pardon*, pp. 296, 415.

⁴⁶ "...and when one ought to return again to the examination of one's own conscience as if to inspect his house, and by prayer and fasting render it fit for the inspector and visitor from above" [*et quando rursus conveniat ad suam ipsorum conscientiam examinandam quasi ad inspiciendam domum suam reverti et hanc orationibus ac ieiuniis superno inspectore ac visitatore dignam reddere*] (Bede, *De templo*, ed. D. Hurst, Corpus Christianorum, Series Latina [hereafter CCSL], 119A [Turnhout, 1969], lib. 1 lines 205–08 [p. 152]; trans. *On the Temple*, with notes by Sean Connolly and introduction by Jennifer O'Reilly, Translated Texts for Historians [Liverpool, 1995], 11 [3.2]; cf. Hrabanus Maurus, *Commentaria in libros IV Regum*, III.5, PL 109:137B. See also Claudius of Turin, *XXX Quaestiones Super Libros Regum*, in PL 104:729B; and Angelomus of Luxeuil, *Enarrationes in libros Regum*, III.5, PL 115:408C.

⁴⁷ "...returned to conscience, they understood this was done on account of their sins" [*reversi ad conscientiam intellexerunt hoc ob sua scelera factum...*] (Bede, *In Ezra et Nehemiam*, ed. D. Hurst, CCSL 119A [Turnhout, 1969], lib. 2, lines 1791–92 [p. 332]). Hrabanus: "...revocentur itaque intus ad conscientiam, ut prius propria corrigant, et tunc aliena reprehendant..." (*In librum Iudicum*, in PL 108:1200B).

⁴⁸ See note 35 above. Bede, *In proverbial Salomonis libri iii*, ed. D. Hurst, CCSL 119B (Turnhout, 1983), II.xii, 18, line 100 (p. 77).

⁴⁹ "They [Adam, Eve, and subsequent sinners] hide themselves from the face of God, not so that the judge not see their conscience, but so that they never look into the glory of his face except in looking back" (Bede, *Libri quattuor in principium Genesis usque ad natiuitatem Isaac et eiectionem Ismahelis adnotationum (sive Hexaemeron)*, ed. C. W. Jones, CCSL 118A [Turnhout, 1967], 1:3 line 2019); "and before his judgement they are condemned, with their own conscience accusing..." [*qui Deum contemnentes, et ante iudicium eius propria conscientia se accusante condemnantur...*] (Bede, *In proverbial Salomonis libri iii*, II.11, line 29).

seems to have been interested in some of the more complex passages. Alcuin is one of the witnesses to the popularity of an Augustinian passage on conscience also used by Bede and other commentators on the Gospel of John, on the verses “if anyone thirst, let him come to me and drink. He who believes in me, as the scripture has said, ‘out of his breast shall flow rivers of living water.’”⁵⁰ Augustine had commented, “The interior breast of a man is the conscience of the soul. Therefore that liquor consumed revives the purged conscience, and pouring forth, it will have a fountain; indeed it will be this very fountain. What is the fountain, and what is the river that flows from the breast of the inner man? Benevolence, through which he wishes to care for his neighbour.”⁵¹ Conscience in communion with Christ is a vessel of spiritual life that can both be cleansed privately and that has the social capacity to refresh others with goodness. The passage, cited too by Walafrid Strabo and Haimo of Halberstat, is noteworthy because it is part of a larger discussion that refers to the Lord as a physician who knows about a condition that even the sufferer may not perceive, and thus connects the interior thirst and revivification of conscience to therapeutic tropes well-known in penitential discourse.⁵²

Another elaborate explanation Alcuin borrowed from Bede or from Augustine, also on the Gospel of John, explicates the juridical significance of conscience. The biblical inspiration is the story of Susannah, who was falsely accused of adultery by two elders and saved only by the inquisitorial acumen of Daniel (Daniel 13).⁵³ Augustine recalled, when puzzling over Jesus’s remark to the scribes and pharisees, “In your law it is written that the testimony of two men is true” (John 8:17), that indeed, two witnesses spoke against Susannah, but their testimony was not true. To reconcile the passages, he offered the explanation that the

⁵⁰ John 7:37–38.

⁵¹ *Venter interioris hominis conscientia cordis est. Bibito ergo isto liquore vivescit purgata conscientia, et hauriens, fontem habebit; etiam ipsa fons erit. Quid est fons, et quid est fluvis qui manat de ventre interioris hominis? Benevolentia, qua vult consulere proximo* (Augustine of Hippo, *In Evangelium Iohannis Tractatus*, ed. R. Willems, CCSL, 36 [Turnhout, 1954], tr. 32, par. 4, lines 3–7 [pp. 301–02]). Cf. Bede, *In sancti Iohannis evangelium expositio*, cap. 7, PL 92:732C; and Alcuin, *Commentaria in sancti Iohannis evangelium*, IV.18, PL 100:850D.

⁵² Walafrid Strabo, “Evangelium secundum Iohannem,” in cap. 7, PL 114:388B. Haimo of Halberstat, “Homiliae de Tempore, Hom. LVII (Feria Secunda Post Judica),” in PL 118:338A.

⁵³ Augustine of Hippo, *In Evangelium Iohannis Tractatus*, tr. 36; Alcuin, *Commentaria in sancti Iohannis evangelium*, cap. 20, PL 100:858A; Bede, *In sancti Iohannis evangelium expositio*, cap. 7.

verse “in the mouth of two or three witnesses every word shall stand” referred to the Trinity, “in which is perpetual stability of truth.”⁵⁴ The Trinity, he continued, supported Susannah’s conscience in secret, and raised up Daniel as a witness to convict the false accusers. The conclusion of Augustine’s analysis affirms again that by the law of God (as opposed to that of men) in the judgement of the soul, God is both judge and witness, a witness and judge who needs no other witness to determine the truth of what he sees, and whom no false witness can deceive.⁵⁵ Alcuin’s interest in the conscience in this highly juridical exegesis places him in the company of other Carolingian authors who parsed the story of Susannah for its legal precedents.⁵⁶ Hincmar of Rheims applied it to the trial of Queen Theutberga, and the records he quotes of that trial include an appeal made by Theutberga to conscience as a witness.⁵⁷

In sum, Carolingian discussion of conscience was complex, multi-valent, and juridically oriented. It was edging tentatively toward the proposition that perhaps conscience, aided by God, could stand against the authority of human witnesses, as in the case of Susannah, but the more prevalent view was that it was a site (house, book, or court) for investigation of transgressions known to God. Although conscience could serve as a moral agent, its moral capacity was balanced or limited by

⁵⁴ *Susanna casta duobus falsis testibus urgebatur; numquid quia duo erant, ideo falsi testes non erant? . . . quomodo accipiendum est: in ore duorum uel trium testium stabit omne uerbum, nisi quia hoc modo per mysterium trinitas commendata est, in qua est perpetua stabilitas ueritatis?* (*In Evangelium Iohannis Tractatus*, tr.36, par.10, lines 15–18).

⁵⁵ *Ibid*, line 20: *eligamus nobis, fratres, contra linguas hominum, contra infirmas suspiciones generis humani deum iudicem, deum testem. non enim dedignatur testis esse qui iudex est, aut promouetur cum fit iudex; quoniam qui testis est, ipse iudex erit.*

⁵⁶ On Carolingian exegesis of the juridical significance of the story of Susannah, see Firey, *A Contrite Heart*, which discusses the readings of Hincmar of Rheims and Agobard of Lyons and their relation to the “Lothar Crystal,” a Carolingian carved gem that depicts the story of Susannah. On Patristic citation of the story for its illumination of the problems of false accusations, especially of unwitnessed crimes, see Kevin Uhalde, *Expectations of Justice in the Age of Augustine* (Philadelphia, 2007), pp. 72–75. For references to the continuing place of the Susannah story in later medieval law, see Paul Hyams, “Ius commune et common law au Moyen Âge: les scélérats et les honnêtes gens,” *Bibliothèque de l’école des chartes* 158 (2000), 425. For discussion of the Susannah and Daniel story as the justification for reducing the right to see witnesses in late 12th-century legal opinions, a development related to the rise of inquisitorial procedure, see Frank R. Heerman and Brownlow M. Speer, “Facing the Accuser: Ancient and Medieval Precursors of the Confrontation Clause,” *Virginia Journal of International Law* 34 (1994), 515–22.

⁵⁷ Hincmar of Rheims, *De Divortio*, pp. 145–46, 173–74, 226. Theutberga is reported to have said, “Nequaquam . . . teste deo et propria conscientia . . .” (p. 115).

its vulnerability, defects, or misapprehensions. Lacking complete moral authority, it required scrutiny, whether as a witness, accuser, record, or space, to determine its rectitude. The tropes describing conscience in the court of confession invited innovation in judicial procedures and principles. Because investigation precedes legal arbitration, Carolingians developed modes of moral investigation to precede moral arbitration. That step toward considering the moral or spiritual condition of the accused brought with it problems known in later medieval inquisitorial systems: what moral authority resided in the judge, and what constraints were there upon judicial authority? Who or what determined when moral infractions merited prosecution? How did moral prosecutions fit into patterns or prerogatives of secular government? In the Carolingian context, the investigative process helped to shape the outlines of the answers to those questions.

Despite the many protestations that the interior of the individual was hidden except to the sight of God, Carolingians seem to have been entranced by an interrogative device for exploring the house or court of conscience: the scheme of the seven deadly sins. It was a system well-suited to the descriptions of conscience, for it organized in a memorable and clear way the interior motions of the individual that could be described in accusations or recollections of sin. While Alcuin had once or twice ventured a description of the five senses as the instigators of sin, Carolingian insistence on the interior of the individual as the crucial site of moral transactions seems better matched to the idea that the spiritual motions identified in the system of the seven capital sins were the vital agents of sin.

Like conscience, the motions of pride, avarice, anger, lust, greed, envy, hatred, and despair were universal, and unaffected by the status or condition of the individual. Whereas actions, such as those described in the penitentials, had religious shadings that were contingent upon the clerical or lay identity of the perpetrator, and hence conformed to more traditional juridical analysis that took into account personal status, the universality of spiritual conditions opened penitential inquisition to all. The septad (or octoad, which persisted from earlier centuries) of sin provided a ready set of charges, and external actions could be assessed as evidence of guilt, for actions could be attributed to the motives represented in the capital sins. Using the diagnostic device of the seven capital sins, confessors and confessants could investigate the condition of the interior of each individual destined to come before God's judgement. Penitential literature framed around the seven capital

sins flowed from Carolingian clerics to lay addressees; the quantity suggests a considerable expansion of a penitential and confessional ethos among the laity, just as the public confessions noted at the beginning of this essay indicate a certain enthusiasm for penitential performance.⁵⁸

The impact of pastoral attention to the soul on Carolingian jurisprudence seems discernable in at least three perhaps unexpected developments. First, private confession and spiritual exercises were complemented by an apparent rise in the number and status of ecclesiastical courts. Although Carolingians did not use the dichotomous description of the internal and external *fora* to distinguish between the confessional and ecclesiastical courts, two modes of adjudication within the Church supported both private and public administration of penance in the Carolingian period. Further, principles for determining to which of the two *fora* a transgressor should be directed were shaped by the Carolingian engagement with the question of the privacy and invisibility of the human interior, and the social demands of moral judgements. To allow for more morally oriented prosecutions than had been possible under the quite strictly pragmatic principles used in Roman law, Carolingians admitted new modes for initiating criminal prosecutions.

As seen above, Carolingian Christians faced a triptych of judicial proceedings: the court of conscience, the public court, and the Last

⁵⁸ Attention to the narrow genre of the penitentials has obscured the larger theological and ritual expressions of penitential piety in the Carolingian realms. Many of the penitentials are organized around the capital sins, and so the scholarship on the penitentials is useful in this respect. See especially Meens, "The Frequency and Nature of Early Medieval Penance"; de Jong, "Transformations of Penance"; Raymund Kottje, "Busspraxis und Bussritus," in *Segni e riti nella chiesa altomedievale occidentale, 11–17 aprile 1985*, vol. 1, Settimane di Studio del Centro Italiano di Studi Sull'alto Medioevo, 33 (Spoleto, 1987), pp. 369–403; and Raymund Kottje, "Intentions- oder Tathaftung? Zum Verständnis der frühmittelalterlich Bußbücher," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung* 91 (2005), 738–41, a response to Hubertus Lutterbach, "Intentions- oder Tathaftung? Das Bußverständnis in den mittelalterlichen Bußbüchern," *Frühmittelalterliche Studien* 29 (1995), 120–43. Very important broadening of the questions is supplied by Hamilton, *Practice of Penance*, who focuses on liturgical sources, although largely post-Carolingian ones. Extensive research on the tradition of the virtues and vices is summarized in Richard Newhauser, *The Treatise on Vices and Virtues in Latin and the Vernacular*, Typologie des sources du Moyen Âge occidental (Turnhout, 1993); see also his *In the Garden of Evil: The Vices and Culture in the Middle Ages* (Toronto, 2005). The widespread adoption of the penitential posture and its social and political meanings in the Carolingian period are discussed in Koziol, *Begging Pardon*. A very important study of the manuscript evidence for Carolingian study of a central work on the virtues and vices is Sinéad O'Sullivan, *Early Medieval Glosses on Prudentius' Psychomachia: The Weitz Tradition*, Mittellateinische Studien und Texte (Leiden and Boston, 2004).

Judgement. Across the thresholds separating these courts there passed duplicated imagery and resonating descriptions of each of the courts. What transpired in one court had implications for the proceedings of another. They were linked by personnel who heard auricular confessions, who presided over ecclesiastical courts and attended judicial assemblies, and who preached on the end of time: the bishops and highly placed clergy of the Carolingian empire. After years when episcopal judicial activity was restricted to cases of adultery and incest, in the early 9th century, just at the moment when the number of treatises on the capital sins increased, Charlemagne issued legislation designating bishops as the agents of imperial justice. In the first decree of his capitulary of 802/803, Charlemagne set forth a project, to be implemented by the bishops, for the investigation of moral crime committed by the laity. The crimes listed included patricide, fratricide, and insubordination (*cenodoxia*, one of the technical terms for vanity), but the hidden breadth of the mandate was encapsulated in the phrase, “and other evils which are offensive to God, which are read in the holy scriptures which Christians ought to foreswear [*sic*].”⁵⁹ By identifying internecine homicides and insubordination as the capital crimes entrusted to episcopal jurisdiction, Charlemagne was proposing to alter the system of legal authority, and effectively to weaken the *manus* of the *paterfamilias* or kin-group. He also specified crimes particularly associated with civil war, rebellion, insurgency, or resistance to royal authority.⁶⁰ This was done under the auspices of prosecution mounted on behalf of God; hence the suitability of episcopal jurisdiction over these matters.

The offenses listed in the capitulary were also “public” crimes, whose perpetrators might not be counted upon to enter voluntarily into the court of conscience. Further affirmation of episcopal authority to discipline the guilty occurred in 813 at the Council of Tours, one of the five imperially convened councils of that year. Referring to the crimes of incest, patricide, and homicide, the assembly noted that some of

⁵⁹ *Ut episcopi circumeant parrochias sibi et ibi inquirendi studium habeant de incestu, de patricidiis, fratricidiis, adulteris, cenodoxiis et alia mala quae contraria sunt Deo, quae in sacris scripturis leguntur quae Christiani devitare debent* (MGH, Capp. I.170, 33 ff., cit. Wilfried Hartmann, “Der Bischof als Richter nach den kirchenrechtlichen Quellen des 4. bis 7. Jahrhunderts,” in *La giustizia nell’alto medioevo (secoli V–VIII)*, 7–13 aprile 1994, vol. 42, Settimane di Studio del Centro Italiano di Studi Sull’alto Medioevo [Spoleto, 1995], p. 109 n. 20).

⁶⁰ On the importance of deference, submission, and obedience to royal authority as evidence of the theological virtue of humility, see Koziol, *Begging Pardon*, pp. 185–86 et passim.

the culprits did not wish to lend their ears to the admonitions of their priests, preferring to persist in their criminality. Therefore, those whom it was fitting to coerce with the force of secular power from their evil ways would be subsequently excommunicated, since they did not wish to be recovered by the salvific warnings of the priests. The emperor's decision regarding their fate would ensue.⁶¹ In short, in the view of the bishops and nobility gathered at Tours, the court of conscience had such standing that failure to appear there invited prosecution by both episcopal and secular powers, with the weapons at their disposal. By 845, another such assembly, that of Meaux-Paris, could refer to the hypothetical prosecution of "the capital vices, which bring death to the soul" by an assembly. Those who would be accused in the assembly are described as "obstinate and incorrigible rebels."⁶² The canon elucidates that the accusation was made by an assembly in order to relieve relatives or associates, who might be bound to the sinners either by oaths or affection, from the temptation of perjury.⁶³ It would seem that criminal procedure, as compared to the private suits brought under Roman or vulgar law, was changing in response to interest in public prosecutions, and also interest in protecting the moral and spiritual condition of all possible parties in a case.

A further manifestation of the movement of penitential processes into public legal proceedings was the use of penance as an implement of penal justice. Wilfried Hartmann has noted that documents from the mid-9th century refer to proceedings in which bishops are assured of secular assistance in applying public penance for capital or publicly committed [*publice...perpetrarunt*] crimes, again specified as incest, adultery, homicide, "vel alia crimina."⁶⁴ A mid-9th-century council describes a convicted adulterer who took the wife of another man

⁶¹ *Incestuosi, parricidae, homicidae multi apud nos, heu pro dolor, repperiuntur. Sed aliqui ex illis sacerdotum nolunt admonitionibus aurem accommodare, volentes in pristinis perdurare criminibus. Quos oportet per saecularis potentiae disciplinam a tam prava consuetudine coercere, qui per salutifera sacerdotum monita noluerunt revocari. Quorum aliquos iam excommunicavimus. Sed illi hoc parvipendentes in eisdem perdurarunt criminibus. Quamobrem vestra decernat mansuetudo, quid de talibus deinceps agendum sit* (Tours 813, cap. 41. MGH Conc. II/1, 292, lines 4 ff., cit. Hartmann, "Bischof Als Richter," 110 and n. 21).

⁶² *Scelesosi et in capitalibus vitiis, que anime inferunt mortem, obstinati et incorrigibiles et sanctorum canonum statutis rebelles in synodicis sunt accusandi conciliis* (MGH Conc. III, pp. 130 ff., cit. Hartmann, "Bischof Als Richter," p. 112, n. 28).

⁶³ *Quapropter sancimus nolentes sacramento constringi, ut peccantes proximos, quos amant, periurii timore celare non praesumant...* (MGH Conc. III, p. 130).

⁶⁴ Hartmann, "Bischof Als Richter," pp. 114–15.

publicly to the borders of the kingdom and by his crime defamed the Church of Christ; he was sentenced by order of the king to exile and to a specifically detailed penitential regime of fasting and deposition of his weapons. The same council sentenced a man convicted of five murders to life-long penance and abstinence from conjugal relations.⁶⁵ In these records of publicly applied penitential sentences in criminal cases, it becomes clear that there was significant imperial and royal encouragement, possibly even initiation, for the exercise of episcopal jurisdiction over transgressive laity.

Not only by the use of ecclesiastical assemblies as courts and penances as punishments did penitential practices infuse Carolingian judicial proceedings. The theoretical questions attached to moral arbitration are also evident at several levels and show how the discourse of conscience affected juridical principles. There were, of course, clear distinctions between the metaphorical court of conscience and the criminal court, where the presence of the accused was mandatory and where social and political interests predominated. Those very distinctions, however, offered opportunities for dialectical analysis of rationales for such matters as rules of procedure. It seems that the secular criminal courts retained, or were encouraged to retain, the Roman legal precept that the judge was to render his verdict according to written law, rather than exercise his own discretion.⁶⁶ This principle was at odds with the numerous iterations in treatises on penance that the measure of penance was to be established by the priest's own judgement.⁶⁷ The explicit concern

⁶⁵ Hartmann, "Bischof Als Richter," pp. 116–17.

⁶⁶ In a capitulary issued in 802, Charlemagne decreed, "Ut iudices secundum scriptam legem iuste iudicent, non secundum arbitrium suum" (*Capitularia regum Francorum*, ed. Alfred Boretius, MGH Leges II.2, 1 [Hannover, 1883]). On the history of this principle, see Richard Fraher, "Conviction According to Conscience: The Medieval Jurists' Debate Concerning Judicial Discretion and the Law of Proof," *Law and History Review* 7 (1989), 23–88; Knut Wolfgang Nörr, *Zur Stellung des Richters im gelehrten Prozess der Frühzeit: Iudex secundum allegata non secundum conscientiam iudicat*, Münchener Universitätsschriften (Munich, 1967); and Max Radin, "The Conscience of the Court," *Law Quarterly Review* 48 (1932), 506–20.

⁶⁷ The question was the subject of considerable debate. One of the most widely circulated treatises, the Praefatio to the *Collectio Dacheriana*, offered the view that "The measure of time in performing penance, moreover, the Canons do not fix sufficiently for each specific crime reviewed, but they determined that it should be left largely to the judgement of the priest, because for God the measure of time matters not so much as that of sorrow, and not so much the abstinence from food, but rather the mortification of vices. On account of this, the times of penance they advise are to be shortened by the faith and habit of the penitents, and prolonged by [their] negligence. Nevertheless there are measures of penance imposed for certain faults, according to which the

over the question is illuminating, for it suggests that there was sufficient interaction between the courts of crime and those of conscience that the exercise of judicial discretion was in dispute. Disputes over judicial discretion often indicate that judges have attained considerable authority in directing proceedings, especially if they have inquisitorial roles. In the Carolingian context, both pastoral care and royal administration assumed inquisitorial dimensions, as priests investigated confessants' spiritual conditions and royal officials conducted inquests into a range of legal matters pertaining to royal properties and subjects' conditions of service or criminality.⁶⁸ Debate over judicial discretion in the Carolingian period, then, may be regarded as a dialectic rooted in a narrowing division between pastoral and royal processes, as both religious and secular authorities experimented with inquisitorial techniques and exercised judicial authority on an imperial scale. Judicial discretion reflects yet another introduction of conscience into legal proceedings, for it affirms the importance of the judge's conscience in determining what is true and just.

Yet another imprint of moral arbitration in Carolingian jurisprudence, also related to increased use of inquisitorial procedure, is the evidence that scandal and *mala fama* could initiate judicial proceedings, rather than the accusation made by a specific individual. This use of general public belief, suspicion, or report as a legal instigator is well-known as a feature of the inquisitions of the later Middle Ages, but it

[measures for] other faults are to be calculated, since it is easy to estimate by these customs the punishment and censure of the Canons" [*Mensuram autem temporis in agenda paenitentia, idcirco non satis attente praefigunt Canones pro uno quoque crimine, sed magis in arbitrio Antistitis reliquendum statuunt, quia apud Deum non tam valet mensura temporis quam doloris, nec abstinentia tantum ciborum, sed mortificatio potius vitiorum. Propter quod tempora paenitentiae fide et conversatione paenitentum abbrevianda praecipunt, et negligentia protelanda. Exstant tamen pro quibusdam culpis modi paenitentiae impositi, iuxta quos caeterae perpendendae sunt culpa, cum sit facile per eosdem modos vindictam et censuram Canonum aestimare*] (Luc d' Achery, "Collectio Dacheriana," in *Spicilegium, sive Collectio veterum aliquot scriptorum qui in Galliae bibliothecis delituerant* [Paris, 1723], p. 512). The first portion of the cited text is Pseudo-Alcuin, *De Divinis Officiis*, PL 101:1199. Cp. Isaac of Langres, *Capitularia*, I.29 (PL 1.30): "Poenitentibus secundum differentiam peccatorum episcopi arbitrio poenitentiae tempora decernantur..." Cp. Theodulph of Orléans, *Statuta* II, capp. III: Peter Brommer, *Capitula Episcoporum*, MGH (Hannover, 1984), pp. 155–57.

⁶⁸ Carolingian inquisitions were largely royal ventures, although sometimes ceded to "personnes morales ou physiques déterminées," according to F. L. Ganshof, "La preuve dans le droit franc," in *La Preuve*, pp. 95–98; cf. van Caenegem, "La preuve dans le droit du moyen âge occidental: rapport de synthèse," pp. 707–08.

is generally held to have begun in the 13th century.⁶⁹ The Carolingian manifestations are merely foreshadowings of later developments, but they are nevertheless interesting indications that the moral enquiries of the internal forum had implications for processes in the external forum. Moral concerns, manifest in scandal, could stand alongside forensic evidence as a legal standard in justifying prosecution.

The status of scandal as a recognized cause for complaint is witnessed in the writings of the great Carolingian jurist Hincmar, bishop of Rheims. Writing in 860 to the archbishops Rudolf of Bourges and Frotar of Bordeaux and the bishops of Aquitaine to relay his opinion regarding the disordered marital arrangements of Count Stephan of Auvergne, whose case was prosecuted at the synod of Tusey, Hincmar claims that scandal supercedes normal accusatorial procedure. Noting that although normally such a case could not be presented to a synod because no-one could be accused *in absentia* through a written complaint, in this instance, because for almost three years the problem had been discussed among the nobility and because such discord, if prolonged further, would be a great scandal to the Church and a detriment to the kingdom, it was necessary for the bishops convened at Tusey to address it.⁷⁰ Hincmar returned to the issue of scandal again at the end of the treatise and argued that had Stephan not been driven by necessity to make public the crime of fornication, he would have been able to do penance through secret confession. Although drawn into guilt, because he showed reverence to God he should receive “regular penance” appropriate to that guilt and set by the discretion of his own bishop (as the canons prescribe, affirms Hincmar).⁷¹ The penance would thus

⁶⁹ Concise expositions on the use of *fama* as an agent of prosecution in medieval inquisitions after the 13th century are in Fraher, “Conviction According to Conscience,” pp. 29, 32–38; and Marie A. Kelleher, “Law and the Maiden: *Inquisitio, Fama* and the Testimony of Children in Medieval Catalonia,” *Viator* 37 (2006), 351–67, at 352, 357–62. See also Jean-Philippe Lévy, “Le problème de la preuve dans les droits savants au moyen âge (1),” in *La Preuve*, pp. 137–67, at 160–65.

⁷⁰ “Unde licet talis accusatio non mereretur synodale optinere responsum—quia nemo quemquam per scripturam absens potest regulariter accusare...—sed quoniam haec ratio per tres circiter annos a plurimis ventilatur et ambo viri nobiles et inlustres et iuxta saeculi dignitatem potentes, si inter se hinc diutius dissident, maximum scandalum in ecclesia et detrimentum in regno ob hoc accidere poterit...” (Hincmar, *Hincmari Archiepiscopi Remensis Epistolae* = *Die Briefe Des Erzbischofs Hinkmar von Reims*, ed. Ernst Perels, MGH, Epistolae, 6 (Karolini aevi 1), p. 88).

⁷¹ “Unde Stephanus pro fornicatione, de qua, nisi coactus necessitate publicaret, secreta confessione paenitentiam agere poterat, ... quia reverentiam Deo exhibuit, ... a proprio episcopo secundum eius arbitrium, quia canones sic decernunt, paenitentiam

ensure that he who presumed to scandalize the Church and its many children made satisfaction to the Church, its governors, and children. It appears, then, that in Stephan's case the accusing agent and also actionable crime was the public and moral problem of scandal.

In addition to providing legal analysis of the case, Hincmar drew a larger conclusion about the religious and political consequences of scandal. Princes and potentates of the earth should strive to keep peace, he urged, lest they create scandal and sedition in the Church and kingdom. One who disdains to obey Church and king, he opined, according to Scripture is to be counted as an "ethnicus et publicanus" (Matt. 18:17) and, hence, is liable to justified excommunication.⁷² In this comment, Hincmar bridged secular and ecclesiastical domains and connected the political crime of sedition to scandal.⁷³ While the irregularities in Stephan's marriage are at a far remove from the heresies and apostasies investigated in later medieval inquisitions, it is nevertheless worth noting that even in the 9th century, the foundations for connecting public scandal with *lèse-majesté* seem to have been in place.⁷⁴

The political dimensions of scandal, however, were not limited to acts of sedition; they also included moral transgressions against the very nature of sacralized kingship. It was noted at the beginning of this essay that a curious feature of Carolingian public life was the fairly frequent eruption of theatrical confessions made by rulers or their consorts. It seems that scandal was so powerful an agent in the instigation of ecclesiastical disciplinary action that it brought kings and queens to confession and thus set limits to their capacities to exercise power. Scandal justified

regularem suscipiat et cum dignis paenitentiae fructibus peragat, ut qui suo neglectu ecclesiam et multos ecclesiae filios scandalizare praesumpsit, ecclesiae et eius rectoribus atque filiis satisficiat..." (Hincmar, *Epistolae*, pp. 105–06). The canon noted by Hincmar is that of the Third Council of Carthage, transmitted in a number of early canon law collections: *Ut paenitentibus secundum differentiam peccatorum episcopi arbitrio paenitentiae tempora decernantur*. Cf. Charles Munier, ed., *Concilia Africae, 345–525*, CCL (Turnhout, 1974), pp. 41, 185, 335.

⁷² "Et terrae principes [Sirmond ed. principes] cum primoribus hoc debet satagere, ne pro hac causa in ecclesia et in regno scandala et seditiones fiant. Quod qui eorum oboedire contempserit, iuxta evangelicum praeceptum sicut ethnicus et publicanus efficiatur; et secundum apostolum qui non oboedit verbo notetur, ut nemo ei commisceatur... Et qui ad pacem redire noluerit, tamdiu excommunicatus maneat..." (Hincmar, *Epistolae*, p. 106).

⁷³ The Carolingian tendency to connect sedition to scandal is noted in P. S. Barnwell, "Einhard, Louis the Pious and Childeric III," *Historical Research* 78 (2005), 136, 138.

⁷⁴ For the Roman law precedents that permitted analogy between heresy and treason, see Elisabeth Vodola, *Excommunication in the Middle Ages* (Berkeley, 1986), pp. 78–79 n.35.

the prosecution by Lothar II of his queen Theutberga to the point of her public confession.⁷⁵ In the case of Pippin II of Aquitaine and the penance exacted from him by Charles the Bald for his alliance with Vikings in his military efforts to resist Charles' rule, Hincmar, writing in 864, is again our witness to the underlying charge of scandal:

Whence it seems to me, not prejudging the synodal verdict pronounced on Pippin, but confident in the mercy of God, who said through his apostle that he would elevate "the mercy of judges" and confident in the charity of our brothers and in the authority of the sacred canons and the Roman popes, Pippin should be exhorted to make a pure confession regarding all his sins. Those he perpetrated at an early age, he may confess secretly, because perhaps he has committed such sins whose wickedness he should announce in public. And because in that regard he has put off his habit and perjured himself and because he has joined himself to pagans, from which alliance of his many evils have been done, let him accuse himself tearfully before the Church among the public penitents and humbly seek penance and reconciliation and concerning all those things which he either confessed secretly or publicly accused [himself], let him be reconciled publicly through the imposition of the hand of episcopal authority and, reconciled, accept clerical tonsure and receive the monastic habit...and be kept in such a place so that he has monks and good canons as guards, who will exhort him...so that he does not desire to return to his earlier vomit, even if by the devil's persuasions he should wish to do so, and that he not be able to arouse a renewed scandal through him in the holy Church and in this very Christianity.⁷⁶

By the mid-9th century, then, it seems clear that scandal was closely associated with public trials surrounded by suspicions of rebellion, sedition, or disobedience to constituted ecclesiastical or secular authority.⁷⁷ The chronology of the use of scandal in legal proceedings requires further investigation, but it appears that it coincides with the promotion of the penitential education that this essay has traced, in part, to interest at Charlemagne's court in the theology of conscience, virtues, and vices. Mayke de Jong's research has shown that in the mid-eighth century, the archbishop Boniface of Mainz railed against attitudes and behaviours at the royal court and among the Frankish clergy that he

⁷⁵ Repeatedly the documents submitted to Hincmar refer to the public knowledge of the crimes of which Theutberga was accused: "nequissima fama de uxore; ut de predicta fama apud eam omnem rei veritatem perquirerent; reatus, ut fama fuerat; nisi iam tantum fama cucurrisset" (Hincmar of Rheims, *De Divortio*, pp. 120, 121, 122).

⁷⁶ Hincmar, *Epistolae*, pp. 164–65.

⁷⁷ De Jong, "Power and Humility," esp. pp. 36–39.

perceived as scandalous, but the very breadth and lack of discrimination in his complaints suggests that he did not see scandal as a particular legal device.⁷⁸ In contrast, Hincmar uses the word with considerable precision, often as a possible offense he is anxious to avoid (“lest I arouse scandal”) and almost always in the context of judicially administered penance or formal judicial proceedings.⁷⁹

This evolving identification of scandal as a crucial symptom of collective moral vulnerability or outrage is thus a counterweight to the evolving identification of conscience as the crucial moral arbiter for the individual. Just as conscience was (according to authorial preference) variously the goad, the accuser, the witness, the repository of recorded sin in the internal forum, so could a troubled public conscience serve in the criminal court. In the transition from the internal to the public forum, however, a semantic shift occurred and the concept of moral agency was invested in the terminology of scandal, probably because “conscience” was so wholly the capacity for individual, autonomous, private judgement. The law used in public courts shows little or no elision of the meanings of *conscientia* as a moral agent and *conscientia* as the usual term used in law to signify the knowledge or awareness of an act. Nevertheless, it is clear that in the eyes of prominent Carolingian clerics, the denizens of the Carolingian empire comprised a body destined for moral action, moral guidance, and moral protest. Just as the Carolingian period saw the use of collective penance for political and social crises, so did recognition of scandal provide a means for the collective conscience (or its guardians) to be heard in

⁷⁸ Cf. Mayke de Jong, “Bonifatius: een Angelsaksische priester-moonnik en het Frankische hof,” *Millenium: Tijdschrift Voor Middeleeuwse Studies* 19 (2005), 8, 13–19.

⁷⁹ “Quod ego, ne scandalizarem devotos; et quod synodus non egit ego agere, ne scandalum cuiquam generarem, non praesumpsi; etc.” (Hincmar, *Epistolae*, 159, 214). The legal recognition of scandal is also attested in the frequent references in the Pseudo-Isidorian decretals, a set of canon law compositions of the mid-9th century. See Paul Hinschius, *Decretales Pseudo-Isidorianae et Capitula Angilramni* (Leipzig; repr. Aalen, 1863; repr. 1963): “et si quis aliquem ex his scandalizaret, gravissimam sibi poenam inferri debere praedicabat” (p. 39); “et opprimere oportet qui in fratres seditiones et scandala excitant” (p. 103); “repellere eos summopere debetis, qui fratribus insidias praeparant, aut in eos seditiones et scandala excitant” (pp. 133, 156); “ne ponatis offendiculum fratri vel scandalum” (Rom. 14:13) (pp. 68, 76, 104); “Beatus qui non fuerit scandalizatus in me” (Luc. 7:23) (p. 71); “et quantae poenae dignus sit, qui eos scandalizat, ipsum Dominum docuisse dicebat, ubi ait, ‘Qui scandalizaverit unum de pusillis estis qui in me credunt...’” (Matt. 18:6) (pp. 41, 42, 51, 92, 243); and also, e.g., pp. 154, 203, 181. Carolingian councils also referred to scandal; see Albert Werminghoff, *Concilia Aevi Karolini (I) [742–842]*, MGH, Concilia II, 1 (Hannover, 1906), pp. 166, 222, 276.

court against the sinner whose own conscience was ungoaded. There is thus an intellectual coherence to the religious and legal frameworks of the Carolingian empire. Scandal and penitential confessions were not simply devices used in efforts to gain advantage over political opponents; they were concepts rooted in a creative theology of the soul as an interior court of conscience where moral judgement occurs. Both the confessional experience and the criminal court were thus invested with new potential for prosecution of intangible offenses, and also for new modes of pleading, as Carolingians selected their moments and modes of blushing before the judge.

*CUM ALIQUIS VENERIT AD SACERDOTEM: PENITENTIAL
EXPERIENCE IN THE CENTRAL MIDDLE AGES*

Karen Wagner

There are things that happen and leave no discernable trace, are not spoken or written of, though it would be very wrong to say that subsequent events go on indifferently, all the same, as though such things had never been.¹

Studying the laity of the early Middle Ages and its perception of and participation in ecclesiastical penance is an exercise in investigating things that assuredly must have happened but that have left little direct trace, as they have been neither spoken nor written of by laypeople themselves. In fact, the laity is united by this silence as by little else. The “laity” encompassed kings, wives, warriors, and serfs; some literate, most not; many fully integrated into the Christian *Weltanschauung*, others better described as merely superficially Christian. In all, the laity was comprised of individuals whose understanding and experience of penance would have differed widely.²

The first step in uncovering the lay experience of penance is separating the *goal* of penance—what those who administered it wanted penance to do—from the *role* of penance—what it actually did for the people who experienced it. The goal of penance in the early Middle Ages was not only sacramental but also didactic. It would have been an occasion to inculcate Christian beliefs, and it was also an opportunity to model proper Christian behaviour. Yet this activity did not exist in a social vacuum; in order to be effective, early medieval penance would

¹ A. S. Byatt, *Possession* (New York, 1990), p. 552.

² Scholarly opinion on the penitential experience of laypeople in the early Middle Ages ranges widely, from a denial of any meaningful contact to assumption of practices in line with those of later centuries. For some representative views, see Alexander Murray, “Confession before 1215,” *Transactions of the Royal Historical Society*, 6th ser. 3 (1993), 51–81; Rob Meens, “The Frequency and Nature of Early Medieval Penance,” in *Handling Sin: Confession in the Middle Ages*, ed. Peter Biller and A. J. Minnis. York Studies in Medieval Theology, 2 (York, 1998), pp. 35–55; and Sarah Hamilton, *The Practice of Penance, 900–1050*, Royal Historical Society Studies in History, n.s. (Woodbridge, 2001), pp. 201–06.

have to complement at least some secular traditions. Penance would have attached itself to similar social rituals and ceremonies found within the non-Christian cultures evangelized during this period. The closer the connections between penance and these parallel secular activities, the greater would have been its imprint on the laity, and this reinforcement would have been particularly important when penance itself was infrequent.

When the goal and the role are thus distinct, it is a bit easier to approach the laity's perception of penance in the early Middle Ages. Laypeople had little voice in the goal of penance thus understood, nor were they prime movers in the didactic purpose of penance, but they would have left a greater impression on the social role of penance, as it adapted itself to the shared culture of groups in early medieval Europe. Secondly, the laity would have effected shifts in the goal of penance as clerics, knowingly or not, adapted practices to better achieve their goals in the new cultural milieu.

The silence of the laity on these changes is no longer absolute; if we assume that the Church had a purpose in ordering penance for all Christians, and therefore an interest in securing their participation, it would have found itself responding to lay acceptance or rejection of the practice; therefore, what laypeople did or did not do, what they felt and how they reacted, would have helped to shape—overtly or not, consciously or not—the discipline of penance that emerged during this time.

The key to unlocking this lay experience of penance is to remember that, for the laity, penance would have been an event that was experienced: something seen, heard, and felt; it was something done rather than something discussed. Few laypersons could read the prayers, penitentials, *capitulae*, or hagiographic exemplars. Certainly they would have heard sermons about penance, but their primary encounter with it would have been their own physical and emotional experience of it, or the observation of someone else's experience, and all other contact would have been filtered through this event. Therefore, it is in the liturgical rituals of confession, absolution, and satisfaction that we can best glimpse the laity's experience of penance during this period and perhaps discover their own contribution to its development.³

³ On the development of these rituals, see Josef Jungmann, *Die Lateinischen Bussriten in ihrer Geschichtlichen Entwicklung* (Innsbruck, 1932); and Raymund J. Kottje, "Busspraxis

There are two problems that present themselves in any study of the rituals of early medieval penance: the nature of the documentation, and the difficulties inherent in the study of ritual activity from another time and society. There are numerous liturgical *ordines* for penance in manuscripts dated to the early medieval period, and these *ordines* appear in a variety of documents.⁴ Their formulae are part of sacramentaries, and they are attached to penitentials; less formal directions for the rituals of penance are also included in *capitulae*. The descriptions of penance that appear in sermons, letters, and hagiography, while less formal than an *ordo*, are perhaps better witnesses to actual practice.⁵ These liturgical *ordines* are, however, enigmatic historical sources. As is true for the penitentials, their manuscript tradition is difficult to ascertain.⁶ The existence of a particular *ordo* can tell us nothing concrete about when the ritual was actually celebrated, or by whom, or how often. A single sacramentary might contain one or more *ordines* for penance, which makes it difficult to trace with any certainty the development of liturgical practices. Was one *ordo* ignored while the other was in common use? If both were used, how was a decision made between them for any particular occasion? Some *ordines* are incomplete, or have abbreviated instructions, and this often makes it difficult to know whether a particular ritual was intended for public or private penance. There are *ordines* sufficiently long and involved for some scholars to conclude that they could never have been celebrated; at the same time, the compilers of these sacramentaries must have also recognized this difficulty, because some of them added instructions that the full rite need be celebrated only "if time and circumstances permit it."⁷ This lends support to the idea that these *ordines* were in use, but it also leads us to yet another

und Bussritus," *Segni e riti nella chiesa altomedievale occidentale*, 2 vols, Settimane di studio del centro Italiano di studi sull'alto medioevo, 33 (Spoleto, 1987), 1:369–95.

⁴ On the sources for medieval liturgy, Cyrille Vogel, *Medieval Liturgy: An Introduction to the Sources*, trans. and rev. by William Storey and Niels Rasmussen (Washington, D.C., 1986), is indispensable; a list of the most important penitential *ordines* appears on pp. 188–90.

⁵ For the use of hagiographical sources, see Cyrille Vogel, "La discipline pénitentielle en Gaule des origines à la fin du IX^e siècle: Le dossier hagiographique," *Revue des Sciences Religieuses* 30 (1956), 1–26; 157–86.

⁶ 6. See Kottje, "Busspraxis und Bussritus," for a preliminary attempt to trace the diffusion of both the penitentials and the *ordines* attached to them.

⁷ The directive is found in an *ordo* from the *Romano-Germanic Pontifical*; after a long confession and a series of prayers, the confessor and the penitent are instructed to rise up, go to the church, and together recite the penitential psalms, "si loco vel tempore congruit," *Pontificale Romano-germanique du X^e siècle*, ed. Cyrille Vogel and Raymond Elze,

question: if the full rite was not necessary, what elements within it were considered essential, and why?

Countering the arguments against using the liturgical *ordines* as a faithful witness to actual practices are indications that the *ordines* were consciously shaped and adapted during this time. For example, Raymond Kottje has pointed out that while some penitentials reproduced penance lists from an earlier penitential, they often bypassed the *ordo* attached to that penitential in favour of another more suited to local needs and traditions.⁸ In addition, vernacular *ordines* survive, which can only be explained by a need to expand the ritual beyond the Latinate class.⁹ Sources contemporary to these *ordines*, such as the Rule of Chrodegang, the *capitulae* of Theodulf of Orléans, and other 9th-century bishops, as well as prayer collections and sermons, discuss or describe the practices in these penitential liturgies and show their importance in the early Middle Ages. Finally, while conservatism certainly prevails in the copying of these *ordines*, new prayers and rituals do introduce themselves over time.¹⁰ In fact, the survival, with important adaptations, of rituals for public as well as private penance well into the High Middle Ages testifies to their continuing value to medieval Christian society.¹¹

The *ordines* indicate that from at least the 9th century, penitential activities were divided into two broad categories: public and private.¹² Their differences should not be overdrawn; the actual confession of one's sins was rarely public, and, given the communal nature of early medieval society, no penitential satisfaction could remain entirely private. Both forms of penance shared three essential components: a private

2 vols, *Studi e Testi*, 226–27 (Rome, 1963), 1:20. This *ordo* is hereafter cited as *RGP* 99. See Hamilton, *The Practice of Penance*, pp. 108–22, for a discussion of this *ordo*.

⁸ Kottje, “Busspraxis und Bussritus,” pp. 388–89.

⁹ For an example of vernacular instructions for penance, see Roger Fowler, “A Late Old English Handbook for the Use of a Confessor,” *Anglia* 83 (1965), 1–34. Rob Meens has also pointed out that many penitential manuscripts, and presumably the *ordines* attached to them, might have been *less* liable to survive because they would have been more frequently thumbed through by priests using them to administer penance properly; Meens, “Frequency,” p. 39.

¹⁰ For an excellent discussion of the diffusion of practices, see Sarah Hamilton, *The Practice of Penance*, pp. 128–35.

¹¹ See Mary C. Mansfield, *The Humiliation of Sinners: Public Penance in Thirteenth-Century France* (Ithaca and London, 1995).

¹² See Mayke de Jong, “What was ‘Public’ about Public Penance? *Paenitentia publica* and justice in the Carolingian World,” in *La Giustizia nell’alto medioevo II (secoli IX–XI)*, *Settimane di studio del centro italiano di studi sull’alto medioevo*, 44 (Spoleto, 1997), 863–902.

confession of sins to a priest accompanied by prayers; an imposition of a penance proper, that is, the performance of acts such as fasts, prayers, or almsgiving, which were meant to signify the penitent's acknowledgement of sinfulness and desire for forgiveness; and some form of absolution. Public penance, recognized as the older of the two forms, was reserved for certain grave sins and took place within a general call to confession and penance given to all Christians during the liturgical season of Lent.¹³ During the Carolingian era, a further distinction was made that some sins, if publicly known, also required the stricter discipline of public penance. This public ritual was presided over by a bishop, rather than a priest, and was separated into two ceremonies: a formal separation of the penitent from the community of the faithful on Ash Wednesday; and a formal reconciliation with the penitent's reintroduction into the church on Holy Thursday. Penitents could avail themselves of this public form of penance only once in their lives. Private penance was under no such restriction, although custom apparently varied in how often the laity were expected to confess and undergo penance.¹⁴

The penitential *ordines* that developed from these three components share a common structure. In private penance, the penitent was greeted by the confessor after the latter had prepared himself with prayer. Following additional prayers, the confessor either led the penitent through an interrogation organized around some categorization of sins or listened to a confession of sins. Their conversation could include questions about the articles of faith and whether the penitent was willing to forgive those who had injured her. The priest and penitent prayed together, and a prayer of absolution would be included, then the penitent was dismissed. In public penance the penitents, clothed in distinctive garments, were met at the door of the church, where they lay prostrate while the bishop prayed over them. The penitents then disappear from the liturgical documents until Holy Thursday, when they once again

¹³ See C. Vogel, "Les rites de la pénitence publique au X^e et XI^e siècles," in *Mélanges offerts à René Crozet*, ed. Pierre Gallais and Yves-Jean Riou, 2 vols (Poitiers, 1966), 1:137–44.

¹⁴ The Carolingian norm for the reception of communion was three times a year, which would appear to indicate a similar expectation for penance; Meens, "Frequency," pp. 37–38. The *Rule of Chrodegang* is probably the best known document that instructed Christians to confess three times a year; Chrodegang of Metz, *Regula canonicorum, Patrologiae cursus completus. Series Latina*, ed. J.-P. Migne (Paris, 1844–91) [hereafter PL] 89:1071–72.

prostrated themselves before the church doors as the bishop prayed over them; they were given absolution and were admonished not to return to their sinful ways. These were the penitential acts that the laity of the early Middle Ages would have encountered—perhaps not every single one of them, and perhaps not with any remarkable frequency, but a slow, continuous effort of the Church over time would have knit the ritual into the common fabric of Christian life. Also important in this development would have been the subsidiary traditions that reinforced the institutional message of penance and confession: the reception of ashes at the beginning of Lent, the prayers and processions of Rogation Days, and the recitation of intercessory prayers, eventually developing into the *Confiteor*, during Mass.¹⁵

Upon the rather spare framework for public and especially private penance, many *ordines* embroidered specific prayers, postures, gestures, and instructions for the use of holy water and incense. The modern reader is often struck by the prolixity and detail of these rituals. What were the clerics who administered them trying to achieve? What were the reactions of the laity who participated, either as penitents or as the attending congregation?

In a modern world that shuns ritual, scholars are often suspicious of it and, indeed, of any activity that is not spontaneous, spontaneity being considered the best guarantee of authenticity.¹⁶ Modern society minimizes its use of ritual and emphasizes the capacity of ritual to be little more than an exercise in hypocrisy, or, at best, an activity too polysemous to yield much useful information about the beliefs of people who engaged in it. There is some truth in these assertions; rituals of any type must be viewed with caution, particularly since there are important debates over the role of ritual activity: does it reinforce or undermine social structures? can it do both at the same time?¹⁷ Two considerations, however, press us to assume rituals did play a significant role in early medieval society: first, it is generally conceded that in a

¹⁵ On the *Confiteor*, see Josef Jungmann, *Missarum Sollemnia*, trans. Francis A. Brunner, *The Mass of the Roman Rite*, 2 vols (New York, 1951), 1:298–311. The reception of ashes at the beginning of Lent became general by the 10th century; see Martin Dudley, “The Sacrament of Penance in Catholic Teaching and Practice,” in *Confession and Absolution*, ed. Martin Dudley and Geoffrey Rowell (Collegeville, 1990), p. 58.

¹⁶ An excellent summary of the critiques given to the study of ritual in the context of early medieval society is found in Geoffrey Koziol, *Begging Pardon and Favor: Ritual and Political Order in Early Medieval France* (Ithaca and London, 1992), pp. 289–324.

¹⁷ See Victor Turner, *The Ritual Process: Structure and Anti-structure* (Chicago, 1969).

more communally focused environment, and one with a well-defined hierarchy, ritual and other less formal ceremonies can play an important role in regulating tensions between and within groups.¹⁸ Second, and perhaps more compelling, recent research into both human cognition and socialization has focused on the role played by emotions, emotions that are culturally defined and that can be made to serve as restraints to guide the moral behaviour expected within a society.¹⁹ The point has been made that feeling emotions and expressing them are so intricately interrelated that one can help create the other; in other words, “choosing to express an emotion or cognitively rehearse it may intensify or even create the actual experience of that emotion.”²⁰ In developing this theory, psychologists are—perhaps unwittingly—following the footsteps of Augustine, who also counselled that action may move the mind; he explained that those who used gesture in their prayer benefited because “by doing this a man excites himself more to a proper state for praying and lamenting more humbly and fervently.” Augustine was candid in admitting that he could not explain the process, “and, somehow or other, since the movements of the body cannot be made except by a previous movement of the mind, by these same actions of the visible man, the invisible soul which prompted them is strengthened.”²¹ In Augustine, the regulators of medieval penance would have found both a model and an authority guiding their own development of acts that would

¹⁸ See Peter Marsh, “Identity: An Ethnogenic Perspective,” in *Persons in Groups: Social Behavior as Identity Formation in Medieval and Renaissance Europe*, ed. Richard Trexler, Medieval and Renaissance Texts and Studies, 36 (Binghamton, 1985), pp. 17–30; and William Ian Miller, *Humiliation* (Ithaca and London, 1993), esp. pp. 116–24. For an application of ritual theory to medieval experience, see C. Clifford Flanigan, Kathleen Ashley, and Pamela Sheingorn, “Liturgy as Social Performance: Expanding the Definitions,” in *The Liturgy of the Medieval Church*, ed. Thomas J. Heffernan and E. Ann Matter (Kalamazoo, 2001), pp. 695–714.

¹⁹ Keith Oatley, “Social Construction in Emotions,” in *Handbook of Emotions*, ed. Michael Lewis and Jeanette M. Haviland (New York and London, 1993), pp. 341–52; and in the same volume, Michael Lewis, “Self-Conscious Emotions: Embarrassment, Pride, Shame, Guilt,” pp. 563–73. Investigating the “History of Emotions” has recently become a topic of considerable interest among medievalists; see Barbara Rosenwein, “Worrying About Emotions in History,” *American Historical Review* 107 (2002), 821–45; and volume 10 (2001) of *Early Medieval Europe*, which is devoted entirely to the study of medieval emotions.

²⁰ Margaret Clark, quoted by William Reddy, *The Navigation of Feeling* (Cambridge, 2001), p. xii. See Reddy’s expansion of this idea in ch. 3, “Emotional Expression as a Type of Speech Act,” pp. 63–111.

²¹ “The Care to be Taken for the Dead,” trans. Gary Lacy, in *Saint Augustine: Treatises on Marriage and Other Subjects*, ed. Roy J. Deferrari (New York, 1960), p. 360.

move both mind and body to penitence and penance. In the *ordines* of early medieval penance, the initial movement to repentance was God's work received by the penitent; it was then to be cultivated and guided by the priest within the ritual itself until it could be expressed by the penitent herself.

It seems clear from many of the *ordines* for both public and private penance that the ritual was centred on both the verbal and non-verbal expression of an emotion of remorse from the penitent. An *ordo* for private penance found in a 10th-century manuscript from Fulda follows an interrogation and an oral confession with the instruction to the priest-confessor:

when [the penitent] has said this, he should completely prostrate himself on the ground and bring forth from the depths of his heart groans and sighs and tears just as God should give to him. The priest should allow him to lie prostrate for a few moments, until he sees that he is contrite through divine inspiration. Then the priest should order him to get up.²²

Here divinely inspired contrition is both acknowledged and nourished by its physical expression through groans, sighs, and tears. Only when this sorrow is demonstrated physically can a verbal form of confession be accepted; in this *ordo* the formal penance is not given until this expression of sorrow takes place, "and then [the penitent] should stand on his feet, and with fear and humility await the judgement of the priest"; when this is pronounced, the penitent again prostrates himself and begs for the priest's intercessory prayers.²³ An 8th-century penitential attributed to Egbert contains an *ordo* that instructs the penitent to come to confession, "with great fear of God, and humility, and he ought to prostrate himself before the priest, and ask him with a tearful voice to prescribe a penance for him."²⁴ The *ordo* for private penance utilized by Regino of Prüm (d. 915) ends an extensive confession of sins and explication

²² "Quo perdicto totum se in terram prosternat et gemitus atque suspiria vel lacrimas prout deus dederit ab intimo corde producat. Sacerdos vero patiatum eum aliquantis [momentis] periacere prostratum, iuxta quod viderit eum divina inspiratione conpunctum. Deinde iubeat eum sacerdos consurgere" (*Sacramentarium Fuldense saeculi X*, ed. G. Richter and A. Schonfelder [Fulda, 1912; repr. Farnborough, 1977], p. 43 [hereafter *Fulda*]). This instruction also appears in the *Liber de divinis officiis*, composed c.910 but attributed to Alcuin, PL 101:1198; and in *RGP* 99.54, p. 18.

²³ "et cum steterit super pedes suos, cum tremore et humilitate presteletur iudicium sacerdotis... Percepta autem sententia sacerdotis iterum prosternat se paenitens pedibus illius petens pro se orationem fieri" (*Fulda*, p. 43).

²⁴ *Quando aliquis confessorem suum adierit, tunc, cum maxime timore Dei et humilitate, coram eo se prosternere debet, et eum flente voce rogare, ut sibi penitentiam praescribat...* (*Confessionale*

of the principal vices with the instruction that, “the penitent should prostrate himself on the ground and pray with tears: ‘and I humbly ask you, priest of God, to intercede for me and for my sins before our Lord and creator, as much as I may merit mercy and forgiveness for these and for all my sins.’”²⁵

The mixture of word, gesture, and posture in these instructions is important; authentic sorrow for sin—what would become the Scholastic *contritio*—was the goal of these penitential actions, but this sorrow was never merely an emotion to be felt; rather, it was an emotion that must necessarily be expressed with the body. This penitential ritual paralleled the ritual practices of the secular world of the early Middle Ages: the feudal oath required specific posture and gesture as well as the words; the transfer of land was signalled by a physical transfer of earth as well as a document. Thus in the early medieval mind, sorrow must be expressed through bodily gestures of supplication and tears as well as the spoken word. It was also important that it be expressed before an audience, the community if public penance or the confessor if private. Failure to do so could be a signal of an incomplete or insincere remorse, as Chrodegang warned, “He who sins before the eyes of God but is ashamed to confess to a man is beyond shameless.”²⁶ At the very least, it denied the penitent the prayers and assistance of the community: “the confession which we make to priests also produces this benefit to us, that, having taken such beneficial advice from them, we can wash away the stain of our sins through the observance of most beneficial penances or through mutual prayers.”²⁷

The expectation of tears and other physical manifestations of internal remorse are commonplace in these *ordines*. A prayer from the *ordo* for public penance in the Gelasian Sacramentary asks God to assist the penitent in his prayers, “so that, remaining in weeping confession, he

Pseudo-Egberti, ed. F. W. H. Wasserschleben, *Die Bussordnungen der abendländischen Kirche* [Halle, 1851], p. 302 [hereafter *Ps-Egberti*].

²⁵ *Tunc prosternat se poenitens in terram et cum lacrymis dicat... ‘Humiliter etiam te, sacerdos Dei, exposco, ut intercedas pro me et pro peccatis meis ad Dominum et creatorem nostrum, quatenus de his et de omnibus sceleribus meis veniam et indulgentiam consequi merear’* (Regino of Prüm, *Libri duo de synodalibus causis et disciplinis ecclesiasticis*, ed. F. W. H. Wasserschleben [Leipzig, 1840], p. 147 [hereafter *Regino*]).

²⁶ *Nimis enim improbus est qui ante Dei oculos peccat et homini confiteri erubescit* (Chrodegang, *Regula* c. 31, PL 89:1072).

²⁷ *Quia confessio quam sacerdotibus facimus, hoc etiam nobis adminiculum affert, quia accepto ab eis salutaris consilio, saluberrimis poenitentiae observationibus, sive mutuis orationibus peccatorum maculas diluimus* (Theodulf, *Capitulae*, c. 30, PL 105:200).

might speedily obtain your clemency”; another prayer in the same *ordo* asks God to “look upon your servant who, cast down by the hostile storms of this world, accuses himself with tearful lamentation, so that you might mercifully acknowledge his tears and groans.”²⁸ The emotion of remorse, or *compunctio*, was almost always defined with the example of tears or was commonly described as “internal tears”:

Compunction of the heart is humility of mind with tears, both from the remembrance of sin and from the fear of judgement;...from the double font of compunction tears are accustomed to flow out, that is, when anyone considers most carefully the merits of his works and when anyone sighs from longing for eternal life.²⁹

Prayers in the penitential *ordines* repeat the image: “To you, O Lord, we pour out our humble prayers, we pour out the tears of our heart.”³⁰ A 9th-century prayer collection contains an *oratio pro lacrymis* in which the penitent prays, “out of your affection bring forth from me the internal tears that might dissolve the chain of my sins.”³¹ In an 11th-century *ordo* from northern Italy, the priest-confessor prays, “Pour forth into our hearts, through the grace of the Holy Spirit, compunction and a font of tears, so that we might be able to acknowledge perfectly the guilt of our consciences.”³² The opening prayer in an *ordo* from Angers includes a petition, “Give to [the penitent] a contrite and humble heart and a font of tears, so that he may be capable of offering a true confession to you and a true penance concerning all those things that he shall have confessed to have done.”³³

²⁸ *Tu eius precibus benignus assiste; ut in confessione flebili permanens clementiam tuam celeriter exoret; “respice super hunc famulum tuum qui ab infesta saeculi tempestate demersus, flebili lamentatione suos accusat excessus, ut fletus ac gemitus eius pie suscipias”* (*The Gelasian Sacramentary*, ed. H. A. Wilson [Oxford, 1894], pp. 14, 64 [hereafter *Gelasian*]).

²⁹ *Compunctio cordis est humilitas mentis, cum lacrimis et recordatione peccatorum, et timore iudicii. Ex gemino fonte compunctionis solent profluere lacrymae, id est, dum merita operum suorum diligentius considerat; altera dum desiderio aeternae vitae suspirat* (*Liber de virtutibus et vitiis*, PL 101:620).

³⁰ *Tibi ergo, Domine, supplices preces, tibi fletum cordis effundimus* (*Gelasian*, 65).

³¹ *Et emana mihi lacrimas ex tuo affectu internas quae peccatorum meorum possint exsolvere vincula* (in *Precum libelli quattuor aevi Karolini*, ed. A. Wilmart [Rome, 1940], p. 101).

³² *Infunde cordibus nostris per gratiam sancti spiritus compunctionem, et fontem lacrimarum, ut possimus reatum conscientiae nostrae perfecte cognoscere...*, from an “*Ordo ad penitentiam dando*” (in *North Italian Services of the Eleventh Century*, ed. Cyrille Lambot, Henry Bradshaw Society, 67 [London, 1931], p. 38 [hereafter *North Italy*]).

³³ *Da ei cor contritum, et humilitatum, et fontem lacrymarum, ut veram confessionem tibi valeat offerre, et veram penitentiam, de his omnibus, quae confessus fuerit agere* (from the opening prayer in the “*Poenitentia secundus Andegavensis*” in J. Morin, *Commentarius historicus de disciplina*

This emphasis on tears has taken us a long way from the cut and dried tariffs of the penitentials, but it was nothing new in penitential spirituality; the seven psalms designated as “penitential” are filled with the imagery of sorrow, and many of these psalms were also incorporated into the penitential rituals.³⁴ Psalms 6, 38 (37), 51 (50), and 102 (101) appear the most frequently in the *ordines*, many of which were mindful of the limitations of lay knowledge; instructions from a penitential from Cordoba require the priest to pray the psalms aloud for the penitent if the latter does not know them.³⁵

This focus on tears was particularly acute in the practices of monastic spirituality, where penitence was understood to be unceasing—the perfect humility and satisfaction for sins could only be assured through tears, “by one who, by constantly continuing to groan and sigh sorrowfully, has removed every spot of his former stains.”³⁶ Both Cassian and Origen compiled lists of “the fruits of penitence”; amidst baptism, martyrdom, and almsgiving was “the shedding of tears”; some *ordines* included these lists within their explanation of repentance, and Jonas of Orléans (d. 843) copied these lists into his *De institutione laicali* and made special mention of the baptism of tears that could wash sinners clean: “martyrs pour out their blood, sinners pour out their tears.”³⁷ Hrabanus Maurus (d. 856) explained this metaphor of a baptism of tears: “We confess that all sins are washed away by the fruitful compunction of penance. For the tears of the penitent are reckoned as baptism by God, whence, however great the sins, however grave, there must be no

in *administratione sacramenti poenitentiae* [Venice, 1702], pp. 587, 588. The manuscript is late 11th-century).

³⁴ On tears, see P. Adnès, “Larmes,” *Dictionnaire de Spiritualité* 9:287–303. For the use of penitential psalms in penitential liturgy, see the *ordo* for reconciling public penitents in the Gelasian Sacramentary: the bishop prays Psalm 50(51) aloud as the penitents are brought into the church; *Gelasian*, p. 64. The Romano-Germanic Pontifical includes the instruction, “tunc imponat sacerdos septem psalmos penitenciales,” *RGP* 99.56, p.18; see also *Fulda*, p. 43.

³⁵ “Si tenet psalmos, dicat tecum simul in terra prostratus. Et si ille non tenet, tu dic pro eo: Psalmum VI, ‘Domine ne in ira tua,’ L, ‘Miserere secundum’ usque ad ‘cor mundum,’ CII, Benedic anima,” (*Paenitentialia Hispaniae*, ed. Francis Bezler, with Ludger Körntgen, CCSL 156A (Turnhout, 1998), pp. 43–69, at 51 [hereafter *Cordoba*]).

³⁶ John Cassian, *Collatio* 20.7, trans. Edgar C. S. Gibson, *Nicene and Post-Nicene Fathers*, 2nd series, ed. Philip Schaff and Henry Wace (Grand Rapids, 1994), p. 499.

³⁷ *Cordoba*, p. 47, ranks “perfusio lacrimarum” fourth as a remedy for sin; see also *Merseburgense A*, in Wasserschleben, *Bussordnungen*, p. 388; and Jonas of Orléans, *De institutione laicali* I.5, PL 106:130–31. Theodulf of Orléans, who also produces a list, does not include tears, *Capitulae*; PL 105:203.

despairing of God's mercy for them."³⁸ What the rituals of penance, both public and private, contributed was a forum for the laity to be guided into the experience, and then the expression, of this sorrow.

The church fathers were as familiar with tears that did not signal true remorse as modern scholars are with the potential for hypocrisy within ritual, and many of the *ordines* assume the penitent comes to penance without true contrition; the creation of this remorse to be expressed was, then, the responsibility of the confessor. The confessor himself is expected to experience this remorse in the course of the penitential ritual, and many *ordines* warn confessors that, should they lack the proper penitential emotions themselves, they may imperil the penitent: "It is necessary for us to receive those who come to penance with the greatest sorrow and tears, and pray for them with our whole heart and soul. . . . How can we be mediators except through tears and prayer?"³⁹ As Halitgar of Cambrai explained, "no priest or bishop can cure the wounds of sinners, or remove sins from their souls, except through exceptional solicitude and the prayer of tears."⁴⁰

In some *ordines*, the confessor's opening prayer and gestures are expected to be a physical example of contrition and thus an invocation to the penitent's own sorrow. A penitential attributed to Bede underlines this idea when it says that "Bishops and priests, when they receive the confessions of the faithful, ought to humble themselves and pray with groans of sorrow and with tears, not only for their own offences but also for those of all Christians."⁴¹ The prayer that follows is explicitly not said in the presence of the penitent; the priest-confessor is instructed to go away into his own room or, if that is not possible, to

³⁸ *Ita poenitentiae compunctione fructuosa, universa fateamur deleri peccata. Lacrymae enim poenitentium apud Deum pro baptismo reputantur: unde et quamlibet sint magna delicta, quamvis gravia, non est tamen in illis Dei misericordia desperanda* (Hrabanus Maurus, *De clericorum institutione*, 2.29, PL 107:342).

³⁹ *Quia cum summum gemitum et lacrimis oportet nos suscipere eos, qui ad poenitentiam accedunt, et debemus orare pro eis ex toto corde et ex toto animo, . . . Et quomodo nos possimus mediatores esse nisi per lacrimas et orationem* (*Paenitentiale Oxoniense II*, ed. R. Kottje, L. Körntgen, and U. Spengler-Reffgen, *Paenientialia minora Franciae et Italiae saeculi VIII–IX*. CCSL 156 [Turnhout, 1994], p. 186 [hereafter *Paen. min.*]).

⁴⁰ *Nullus sacerdotum vel pontifex peccatorum vulnera curare potest, aut animabus peccata auferre, nisi praestante sollicitudine et oratione lacrymarum* (Halitgar of Cambrai, *Collectio Libri VI*, ed. H. J. Schmitz, *Die Bussbücher und das kanonische Bussverfahren* [Dusseldorf, 1989; repr. Graz, 1958], p. 291 [hereafter *Halitgar*]).

⁴¹ *Humiliare se debent episcopi sive presbyteri et cum tristitiae gemitu lacrimisque orare non solum pro suis delictis, sed etiam pro Christianorum omnium* (ed. Wasserschleben, *Bussordnungen*, p. 251 [hereafter, *Ps-Bede*]).

say it *in corde suo* [in his heart], but the *ordo* expresses the belief that in doing this the confessor will be so moved himself that “when the one who comes to penance sees the priest, sorrowful and weeping for his crimes, struck even more by the fear of God, he himself will be even more sorrowful and will shudder at his sins.”⁴² Both this instruction and the explanation were copied into the *ordines* composed by Halitgar of Cambrai and Regino of Prüm in the 9th century and Burchard in the 10th.⁴³ However, Regino and Burchard emended the more general “all Christians” to “the lapse of his brother,” presumably to focus attention on the penitent waiting to confess; Burchard then adds a prayer for the priest, who asks God “to receive my prayer, which I pour out before the sight of your clemency, for your servants who come to penance, that they might be given a spirit of compunction.”⁴⁴

In other instructions, the confessor is expected to model other ritual actions of remorse for the penitent. This demonstrative role follows the practices of public penance. The *ordo* for public penance in the Romano-Germanic Pontifical has the penitents slowly process into the church, continually genuflecting and praying as they are called forward by the bishop; while they move forward into the church, the archpriest recites a list of passages from Scripture that emphasize the sorrow, mourning, and tears that accompany true repentance. Directions in the *ordo* make clear that this activity is intended to “excite the movement toward repentance” within the penitents.⁴⁵ When they reach the bishop, they prostrate themselves before him while he recites Psalm 51 (50), itself a dramatic invocation of personal sinfulness; “when he is finished, the bishop prostrates himself with the penitents in the oratory.”⁴⁶ Another *ordo* for public penance instructs the bishop or

⁴² *Videns autem ille, qui venit ad poenitentiam, sacerdotem tristem et lacrymantem pro suis facinoribus, magis ipse timore Dei percussus amplius tristantur et exorrescit peccata sua* (*Ps-Bede*, p. 252). The same intercessory prayer appears in *Merseburg* (Wasserschleben, *Bussordnungen*, pp. 389–90), but without this explanatory comment.

⁴³ *Regino*, p. 140; *Halitgar*, pp. 291–92; Burchard, *Decretum*, XIX.2, PL 140:949–50.

⁴⁴ Instead of “pro omnium Christianorum,” Regino and Burchard use “pro fratris casu”; *Regino*, p. 140; Burchard, *Decretum*, XIX.2, PL 140:949–50. The beginning of Burchard’s prayer is also in Halitgar, but “ut det illis spiritum compunctionis” is new to Burchard.

⁴⁵ “Hic ergo dum ad poenitudinis actionem tantis excitatur exemplis, sub conspectu ingemiscentis ecclesiae . . .,” *RGP* 99.226, p. 60.

⁴⁶ “Deinde imponat episcopus antiphonam: Cor mundum crea in me Deus et spiritum rectum innova in visceribus meis, cum psalmo Miserere mei Deus. Quo finito, prosternat se episcopus una cum penitentibus in oratorio, clero faciente letaniam,” *RGP* 99.229, p. 61.

the archpriest to lie “prostrate on the ground with all the clergy and sing the seven penitential psalms with tears” for the absolution of the penitents.⁴⁷ Theodulf of Orléans instructs the priest to kneel with the penitent while he is giving his confession.⁴⁸ The *ordo* attached to one penitential instructs the priest-confessor, “And when [the penitent] has given his full confession, then the priest should prostrate himself with him before the altar, and they should recite the seven penitential psalms, if the penitent knows them, with groans and—if it is possible—with weeping.”⁴⁹ A manuscript from Cordoba contains a penitential that instructs the confessor, “when he has confessed everything, they should pray together with sighs and tears.”⁵⁰

The confessor is sometimes instructed to exhort the penitent through the use of an opening sermon. In one *ordo*, the priest-confessor is instructed to tell the penitent, “Beloved brother, or beloved sister, you ought to confess your sins to God and to your priest with compunction and sorrow of heart.”⁵¹ Instructions attached in an 8th-century manuscript from Florence direct the priest-confessor to begin by reminding the penitent of the sufferings of Christ, the Last Judgement, the torments of Hell that await the impenitent, and the eternal rewards given to those who confess their sins.⁵² The *Liber de diviniis officiis*, from the early 10th century, also begins its guidelines for penance with a sermon to be given by the confessor: “Then the priest orders the penitent to sit across from him, and he speaks to him about the aforementioned vices, or about divine exhortations, lest perhaps because of shame or laziness or forgetfulness anything putrid might remain in his heart.”⁵³

⁴⁷ “Post haec in ecclesiam eos introducat et cum omni clero septem paenitentiae psalmos in terram prostratus cum lacrymis pro eorum absolutione decantet,” from an *ordo* “De penitentiae publicae impositione,” in *Les Ordines Romani du haut moyen âge*, ed. M. Andrieu, 5 vols, Spicilegium Sacrum Louvainense, 29 (Leuven, 1961), 5:367.

⁴⁸ “Qui autem confitetur, flectat genua cum sacerdote coram deo, et tunc confiteatur quidquid a juventute recordari potest,” Theodulf, *Capitulae*, PL 105:219.

⁴⁹ *At ille, cum sua integra dederit confessionem, tunc cum ipso prosternat se ipse sacerdos ante altare et confitens, si tenet psalmos, cum gemitu, et, si fieri potest, cum fletu (Paenitentiale Floriacense in Paen. min., ed. Kottje, Körntgen, and Spengler-Reffgen, p. 97 [hereafter Florence]).*

⁵⁰ *Omnia confessus fuerit, orantes pariter cum gemitu et lacrimis (Cordoba, p. 51).*

⁵¹ *Ideo debes, charissime frater, vel charissima soror, compunctione et gemitu cordis peccata tua Deo confiteri, et sacerdoti tuo...* (Morin, *Commentarius*, p. 587).

⁵² *Florence, p. 97.*

⁵³ *Deinde iubeat eum sacerdos sedere contra se, et colloqui cum eo de supradictis vitiis, sive exhortationibus divinis, ne forte pro verecundia aut ignavia, sive oblivione aliquid putridum in corde remaneat (Liber de divinis officiis, PL 101:1196–97).*

Other *ordines* intended the confessor to accompany the modelling of this true penitential behaviour by clearly presenting himself as a fellow sinner. The Romano-Germanic Pontifical begins its penitential liturgy with a priest's prayer, heard by the penitent: "Almighty God, be merciful to me a sinner."⁵⁴ Regino instructs the confessor "to exhort affectionately the penitent with these words: Brother, do not be ashamed to confess your sins, for I also am a sinner and perhaps I have done worse deeds than you have done."⁵⁵ One *ordo* suggests a less personal reminder: "Don't be ashamed to confess, my son, we are all sinners; no one is without sin but God alone,"⁵⁶ but another *ordo* proposes an even more pointed comparison of the confessor's and the penitent's sinfulness: "In addition the priest ought to name individual sins to the one to whom he gives penance, saying: 'man is weak, my son. I have committed such and such a sin; if you have done the same thing, tell me, because I am like you in my sins.'"⁵⁷ This instruction conflates the directions to express a shared sinfulness with an equally common directive for the confessor to actively interrogate the penitent.

There is a didactic component in almost all the *ordines* for private penance. Some included an interrogation at the very beginning, and the first conversation between confessor and penitent was an inquiry about the latter's belief in the Trinity and the Last Judgement.⁵⁸ In an *ordo* from the Romano-Germanic Pontifical, the confessor was expected to check on the penitent's knowledge of the Creed and the Lord's Prayer.⁵⁹ One *ordo* includes a question covering the penitent's belief in the

⁵⁴ *Domine Deus omnipotens, propitius esto michi peccatori* [after Luke 18:13] (*RGP* 99.44, p. 14). This most popular invocation appears in most of the influential *ordines*, including *Fulda*, *Haltgar*, *Regino*, and Burchard. In some *ordines* it was not to be said in the presence of the penitent; in others it was.

⁵⁵ *Poenitentem alloqui affectuose debet sacerdos his verbis, 'Frater, noli erubescere peccata tua confiteri, nam et ego peccator sum et fortassis peiora quam tu feceris habeo facta'* (*Regino*, p. 141); this instruction is also in Burchard, *Decretum*, 19.4 (PL 140:951).

⁵⁶ *Noli erubescere, fili, nos omnes peccatores sumus; nemo est sine peccato, nisi solus Deus* (*Poenitentiale Vallicellianum II*, ed. Wasserscheben, *Bussordnungen*, p. 555).

⁵⁷ *Insuper debet sacerdos illi, cui poenitentiam dat, nominare singula peccata dicendo: 'Homo fragilis est, fili, ista et ista feci mala; si tu fecisti, dic, quia et ego tui similis sum in peccatis'* (*Poenitentiale Merseburgense A*, c. 121 [CCSL 156, p. 168]). This instruction is found only in the Vatican manuscript of the penitential.

⁵⁸ *Ps-Egbert*, p. 302; *Fulda*, p. 42; *Regino*, p. 141; Burchard, 19.4 PL 140:950.

⁵⁹ "Tunc interroga, si teneat orationem dominicam, et symbolum." This is from *Ordo* 136, "Qualiter sacerdotes suscipere debeant poenitentes more solito," *RPG*, ed. Vogel and Elze (n. 7 above), pp. 226–27, c. 5, p. 235. Only if the penitent knew the prayers would the confession continue. See Hamilton, *Practice of Penance*, pp. 123–28.

efficacy of the penitential ritual itself.⁶⁰ After the penitent completed her confession, the priest was usually expected to continue an interrogation to ensure that all sins had been openly confessed, “and if he recounts very little, or perhaps is ashamed of these horrible sins, you ought to explain and inquire about all the sins that can be mentioned...”⁶¹ For example, Regino tells his confessor that, should he realize that the penitent is too ashamed to speak, he should tell him, “Perhaps, dear one, not all of the things that you have done now come to mind. I am going to question you.”⁶² Not only did this portion of the penitential ritual provide an occasion for instruction on faith and behaviour but also it offered the confessor an opportunity to assess the true depth of the penitent’s repentance.⁶³

The concern that the penitent’s remorse be authentic was also addressed in the emphasis on action or gesture beyond the encounter between penitent and confessor. Penitents were also expected to demonstrate their repentance in their lives; a 10th-century *ordo* for penance contains the instruction:

Daily and lesser sins, without which life cannot be led, are purged by the Lord’s Prayer, when it is said, “Our Father, who art in heaven,” if that which follows is not falsely said, “Forgive us our debts, as we forgive our debtors.” There are many types of alms that can help us whenever we do them so that our sins might be forgiven. But nothing is greater than this: that we dismiss from our heart what anyone has done against us.⁶⁴

⁶⁰ “Interrogatur ei, si credit resurrectionem vel ista omnia, quod dictum est ei, vel si habeat fidem confessionis per iudicium sacerdotis veniam consequi apud Deum,” Florence, p. 97.

⁶¹ *Et si ipse recordatur paruum, aut forsitan de ipsos peccatos turpes uerecundatur quod fecit, tu debes ei exponere et interrogare de omnes peccatos quidquid nominare potest* (Cordoba, p. 51).

⁶² *Fortassis, carissime, non omnia, quae gessisti, ad memoriam modo veniunt. Ego te interrogabo* (Regino, p. 142); see also Burchard, *Decretum* 19.5, PL 140:951. This sentence had a long career in penitential literature: it is cited, for example, by John Burgh in his *Pupilla oculi*, part 5, ch. 7, § S (see Appendix to the essay by Henry Ansgar Kelly, in this volume).

⁶³ Koziol suggests that this was the great advantage of private penance; *Begging Pardon and Favor*, p. 318.

⁶⁴ *Cottidiana vero levisque peccata, sine quibus haec vita non ducitur, dominica oratione purgantur, cum dicitur, ‘Pater noster, qui es in caelis,’ si hoc quod sequitur non mentitur: ‘Dimitte nobis debita nostra, sicut et nos dimittimus debitoribus nostris.’ ... Multa itaque genera sunt elemosinarum, quae cum facimus, adiuvamur ut dimittantur nostra peccata. Sed ea nihil est maius, quae ex corde dimittimus quod in nos quisque peccavit.* This instruction from a variant *ordo* for private penance found in a manuscript of the *Ordo L*—itself connected to the Romano-Germanic Pontifical, ed. M. Andrieu, *Les Ordines Romani du haut moyen âge*, 5:380–81.

Other *ordines* also take the fifth petition of the Lord's Prayer very seriously; the priest-confessor is required to ask the penitent, "Do you wish to forgive everything for those who have sinned against you, so that God might forgive you all your sins?" and two of the *ordines* make clear that if the penitent refused to forgive his enemies, then the priest could not accept his confession.⁶⁵ One *ordo* begins the penitential ritual with the confessor issuing a warning to the penitent that he could not continue if he had hatred for anyone.⁶⁶ To the extent that this might have happened, the rituals of penance moved outside of the church and into a larger circle, where more than the penitent and the confessor would have been affected by them.

The performative value of the actions performed by the penitent within these rituals is further underscored by the forms of absolution they contain.⁶⁷ In almost none of the *ordines* from the early Middle Ages are the words of absolution declarative; the *ego te absolvo* of the scholastic *summae confessorum* does not appear. Instead, the priest or bishop calls upon the mercy of God in a series of prayers, many of which invoke the prayers and intercessions of Mary, Peter and all the saints. Some of the prayers of absolution underline the importance of the penitent's physical demonstration of remorse; only then is a prayer invoking absolution given: "Almighty and eternal God, out of your mercy take away the sins confessed to you from this your servant N."⁶⁸ In some *ordines*, even this supplication for forgiveness is so oblique as to be unremarkable within the context of the entire ritual.

The image that these *ordines* create is one of process: the penitent was brought out of one state and into another, and very little of importance appears to have been left outside of the ritual itself. It appears that early medieval penance could not conceive of a truly repentant penitent separate from this process; even those acknowledged as saintly

⁶⁵ "Vis dimittere illis qui in te peccaverunt omnia, ut et deus dimittat tibi omnia peccata tua? ... Si vult dimittere, suscipias eius confessionem et indicas ei penitentiam. Si non vult, non suscipias eius confessionem," *Fulda*, p. 42. The same instruction is in *North Italy*, p. 39.

⁶⁶ "Videte, fili, ne cum aliquo homine non habeatis hodium et debitum," *Vallicellianum*, II, *Wasserschlehen*, *Bussordnungen* p. 551.

⁶⁷ For prayers of absolution in public penance, see *Gelasian*, pp. 65–66; and *RGP* 99.246–50, pp. 65–66; the latter includes prayers for both individual and communal absolution.

⁶⁸ *Omnipotens sempiterne deus, confitenti tibi huic famulo tuo pro tua pietate peccata relaxa* (*Gelasian*, p. 65); see also *RGP* 99.236, p. 62.

expressed their saintliness through these ritual actions and gestures.⁶⁹ The surprising element in this is the role the penitent herself played in it. Penance and confession were done for and with the penitent, not to her. She was both audience and actor; the confessor was trained to guide and interact with the penitent in such a way so as to bring about the desired actions from her, but her forgiveness hinged upon her performance—in good conscience—of certain acts and words.

Once again the heavy silence of the early medieval laity imposes itself upon us. Did the laity experience these penitential rituals as it was meant to? Or did laypeople merely go through the motions, reluctant participants in an incomprehensible performance? Lacking the voice of these laypeople themselves, we need to listen to the echoes their experience created in later centuries: the ritual and performance of penance in the High Middle Ages, revealed to us in treatises, *summae*, and *ordines* as well. As we might expect, these echoes reveal both success and failure in the inculcation of penance and penance in early medieval Europe. On the one hand, there is an intensification of precisely that emotive element which formed the centre of penance. By the 12th century, *compunctio* and *contritio* are front and centre in discussions of penance, and there is a new expectation that they can be experienced and internalized by certain penitents without the ritual experience of penance itself. The tradition of flexibility within the earlier *ordines*, where the priest-confessor could add or subtract parts as time or need required, possibly contributed to this newer practice. On the other hand, there is a more overt recognition of the need for the priest-confessor to take greater charge in guiding some penitents away from false, feigned, or incomplete emotions of remorse through the rituals of confession. The penitent is no longer both actor and audience but is, instead, either one or the other. The conflict between these two echoes, born out of the experience of early medieval penance and the laity's role in it, now becomes the central focus of medieval confession and penance.

⁶⁹ See Mayke de Jong, "Pollution, Penance and Sanctity: Ekkehard's *Life* of Iso of St Gall," in *The Community, the Family and the Saint: Patterns of Power in Early Medieval Europe*, ed. J. Hill and M. Swan (Turnhout, 1998), pp. 145–58; Iso's saintly parents perform a recognizable form of public penance and are absolved through the miraculous intervention of an angel.

THE SCHOLASTIC TURN (1100–1500): PENITENTIAL THEOLOGY AND LAW IN THE SCHOOLS

Joseph Goering

The major development in the history of penitential thought during the years between 1100 and 1500 is not the dismissing of rigid penitential tariffs, nor is it “the discovery of the individual” or the “re-birth of conscience.”¹ The most important development, it can be argued, was the creation throughout Europe of schools and universities where students were introduced to a common tradition through a common curriculum of study and where they developed common methods of thinking about and of teaching about penance. It is in this context, aptly evoked by the title of Richard Southern’s book: *Scholastic Humanism and the Unification of Europe*,² that students and masters became for the first time an intellectual force to be reckoned with. During these centuries the large and diverse community of thought represented by students of law and of theology came to play for the first time an important role in the history of penance.

It would be a mistake, however, to think of these scholastic jurists and theologians as being primarily concerned with settling arguments about dogma or with determining fine points of doctrine. They were, first and foremost, teachers, and their task was to introduce each year a new crop of students to the entire tradition of law or theology that they represented. If one of their favourite teaching techniques was to present that tradition in terms of seemingly contrary or contradictory doctrines or practices, this should not lead us to believe that they wished to resolve these disputes, or to remove once and for all the tension between competing historical formulations. Rather, we should imagine them as collecting and cultivating as many of these points of conflict in the tradition as possible and then exploring their various

¹ The latter two hypotheses are reflected in titles of influential studies of the period: Colin Morris, *The Discovery of the Individual, 1050–1200* (New York, 1972); and Marie-Dominique Chenu, *L'éveil de la conscience dans la civilisation médiévale* (Montreal, 1969).

² R. W. Southern, *Scholastic Humanism and the Unification of Europe*, vol. 1, *Foundations* (Oxford, 1995).

implications as a fruitful technique for the education of the young jurist and theologian.³

Older histories of penance have, instead, generally chosen to present their subject as a series of battles over doctrine.⁴ It is often supposed, for example, that one school of thought in the 12th century argued for the primacy of interior contrition of the heart in penance, while another championed a view that privileged external confession to a priest. The various authors are then lined up on one side or the other of this “debate,” and a narrative of their supposed conflict is constructed. A more adequate account of this history might propose that both positions were important in the tradition, and that the teacher’s job was to put authoritative formulations of both into conversation with each other. In this essay, I would like to follow this second course and ask what it is that theologians (and canonists) thought they were trying to do when they discussed questions of penance in the schools. The old answer was that they were trying to define doctrines, remove apparent contradictions in the received authorities, and reconcile any ambiguities. In what follows, I will imagine instead that they were not defining or establishing doctrines but, rather, were attempting to introduce a long and rich tradition to students who wanted to master it. Instead of taking sides in a dispute and proposing their own unique solutions, the masters in the schools regularly used disputes to illustrate a common, if complicated, view of penance and give students the tools they needed if they were to engage the entire tradition of which they were the inheritors. It is hoped that this small change in perspective, from adversarial to educational, may allow us to take a fresh look at the history of penance in this period.

³ See the stimulating presentation of “The *Sentences* as a medieval casebook,” in the introduction to Giulio Silano’s translation of Peter Lombard, *The Sentences. Book One: The Mystery of the Trinity* (Toronto, 2007), pp. xix–xxvi.

⁴ Among the best of the older histories of penance in this period are: Henry Charles Lea, *A History of Auricular Confession and Indulgences in the Latin Church*, 2 vols. (Philadelphia, 1896; repr. New York, 1968); Oscar Watkins, *A History of Penance* (London, 1920); Paul Anciaux, *La théologie du sacrement de la pénitence au XIF siècle* (Leuven, 1949); Bernhard Poschmann, *Penance and Anointing of the Sick* (London, 1963); and Cyrille Vogel, *Le pécheur et la pénitence au Moyen Âge* (Paris, 1969).

Gratian

Twelfth-century scholastic culture produced, and quickly came to be dominated by, two school books, Gratian's *Decretum* and Peter Lombard's *Sentences*. These set the tone and direction for discussions of law and theology for the next 500 years and more. A new history of penitential thought from the 12th to the 15th centuries can usefully begin with a reconsideration of these two works. The earlier of the two is Gratian's *Decretum* or, as he called it, the *Concordantia discordantium canonum* [The Harmony of Discordant Canons].⁵ Completed by about 1140, the *Decretum* quickly became the fulcrum of ecclesiastical learning in Bologna, and thence it spread to all the schools of Europe.⁶

The most influential discussion of penance throughout the rest of the Middle Ages was that which was proposed by Gratian, by way of a digression in the midst of his discussion of marriage, in Causa 33 of his *Decretum*.⁷ This extensive treatise on penance, divided by later students into seven "distinctions" that occupy almost fifty pages of the modern critical edition, summed up in a satisfying way the earlier traditions of penitential thought and practice and set the course for future discussions in the schools both of law and of theology. It should not surprise us that it was a jurist who accomplished this feat. Most of the ancient and medieval tradition of penitential thought had been conveyed to the 12th-century authors in canon law collections rather

⁵ The literature on Gratian's *Decretum* is enormous. For our purposes, it may suffice to refer the reader to Anders Winroth, *The Making of Gratian's Decretum* (Cambridge, 2000), for an introduction both to the older literature and to Winroth's new hypotheses about how and when the *Decretum* was composed. For more recent refinements, especially with respect to penance, see now the excellent study by Atria Larson, "The Evolution of Gratian's *Tractatus de penitentia*," *The Bulletin of Medieval Canon Law* n.s. 26 (2004–06), 59–123.

⁶ See Southern, *Scholastic Humanism*, 1:264–318. Still useful is Joseph de Ghellinck, *Le mouvement théologique du XII^e siècle* (Bruges, 1948).

⁷ The most widely cited edition of Gratian's *Decretum* is *Corpus iuris canonici*, vol. 1, *Decretum Magistri Gratiani*, ed. Emil Friedberg (Leipzig, 1879, repr. Graz, 1959), now available online at http://www.columbia.edu/cu/lweb/digital/collections/cul/texts/ldpd_6029936_001/. A digitized version of the 1582 edition of the *Corpus Iuris Canonici*, which has a printed version of the *glossa ordinaria* around the text, is at <http://digital.library.ucla.edu/canonlaw/>. There is no modern translation of the entirety of Gratian's *Decretum* or of its section *De penitentia*; an English translation is in preparation by Giulio Silano, to be published by the Pontifical Institute of Mediaeval Studies (Toronto). The first 20 distinctions, along with the Ordinary Gloss, have been translated into English by Augustine Thompson and James Gordley, *Gratian: The Treatise on Laws (Decretum DD.1–20) ... with the Ordinary Gloss* (Washington, D.C., 1993).

than in theological treatises.⁸ Gratian managed to encompass not only this canonical tradition but also the biblical, patristic, and theological writings on penance as well, including extensive quotations from the very influential little work attributed (falsely) to St Augustine, *De vera et falsa penitentia*. No theological treatise or *summa* of the period could boast of such a wide and deep presentation of the topic of penance as can be found in Gratian's *Decretum*.

Gratian begins his treatment of penance by broaching the question that modern commentators have seen as the crucial issue of the 12th century, namely, whether contrition of the heart and secret satisfaction, without confession to a priest, is adequate for forgiving sins.⁹ Gratian first presents five sentences from the Bible and the Church fathers that would seem to indicate that sins can be forgiven without confession to the Church and priestly judgement [*sine confessione ecclesiae et sacerdotali iudicio*].¹⁰ After presenting a number of other authorities, he concludes, "It is as plain as day that sins are forgiven by contrition of the heart and not by confession of the mouth" [*luce clarius constat cordis contritione, non oris confessione peccata dimitti*].¹¹ Gratian then adds a series of short canons and long expositions of his own that lead, once again, to the conclusion that "it is most evident that it is by contrition of the heart alone, and not by confession of the mouth that sins are remitted"

⁸ On these pre-Gratian law collections, see Lotte Kéry, *Canonical Collections of the Early Middle Ages (ca. 400–1140): A bibliographical guide to the manuscripts and literature* (Washington, D.C., 1999). Gratian should not be imagined to have read all this vast literature himself; he relied heavily on other canonists and the selections they had made from the traditional authorities. On Gratian's immediate sources, see the summary of recent scholarship in Winroth, *Making of Gratian's Decretum*, pp. 15–18.

⁹ *Decretum Gratiani, De pen. D. 1*; ed. Friedberg, pp. 1159–90. Still valuable is A. Debil, "La première distinction du *De Paenitentia* de Gratian," *Revue d'histoire ecclésiastique* 15 (1914), 251–73, 442–55. For the most influential modern discussion of this topic, see Jean Gaudemet, "Le débat sur la confession dans la Distinction I du 'de penitentia' (Décret de Gratien, C. 33, q. 3)," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung* 71 (1985), 52–75. In the following discussion I refer to the distinction between the final or "vulgate" recension of the *Decretum*, completed by c.1140 and represented more or less adequately by Friedberg's edition (n. 7 above), and one or more earlier drafts of the text. The contents of one earlier recension are outlined by Winroth, *Making of Gratian's Decretum*, Appendix, pp. 197–227. The fullest and most recent discussion of the development of the text of the *De penitentia* is Larson's "The Evolution of Gratian's *Tractatus de penitentia*."

¹⁰ *De pen. D. 1 d.a. c. 1–c. 5*; ed. Friedberg, p. 1159.

¹¹ *De pen. D. 1 d.p. c. 30*; ed. Friedberg, p. 1165. Twenty-four additional canons (cc. 6–29) are included by the time the final recension of the *Decretum* begins to circulate (see n. 9 above). These sentences develop various aspects of the question and complicate the presentation in significant ways.

[*evidentissime apparet, quod sola contritione cordis sine confessione oris, peccatum remittitur*].¹²

But "other authorities testify to the contrary," Gratian tells us, and he goes on to cite many of the same authors whom he had quoted earlier (Ambrose, John Chrysostom, Augustine) to the effect that "no one can be cleansed of sin without confession of the mouth and satisfaction of good works, if time is available for such works" [*sine confessione oris et satisfactione operis neminem a peccato posse mundari, si tempus satisfaciendi habuerit*].¹³ These arguments he sums up in a long exposition that concludes: "From all these things it is easy to show that without confession no one can merit forgiveness" [*ex his omnibus facile monstratur sine confessione nullum ueniam posse mereri*].¹⁴

This conclusion is followed by another series of authoritative canons in which various aspects of confession and satisfaction are discussed. Among these are two canons (cc. 82–83) that were added to an early recension of the *Decretum* and that adumbrate an important development in succeeding centuries, namely, a growing interest in the remission of the penalty or punishment due to sin either through performing penances in this life or through indulgences in the next.¹⁵ The Ordinary Gloss (c.1215) on these two canons comments: "This is the sixth part of the distinction, in which it is said that, although sins are taken away through contrition and confession, nevertheless there remains the punishment, either in this life or in purgatory, except in cases of the greatest contrition."¹⁶ Three further canons (cc. 84–86), likewise destined to have a lively and important future in discussions of penance, are also added here to the earlier recension.¹⁷ These introduce traditional authorities arguing that, where a penance is not specified in the canons, priests may determine by their own judgement [*arbitrium suum*], and according to the circumstances of the penitent, the length and severity of penances to be enjoined.¹⁸

¹² *De pen.* D. 1 d.p. c. 36, ed. Friedberg, p. 1167; cf. cc. 31–37.

¹³ *De pen.* D. 1 d.p. c. 37, ed. Friedberg, p. 1167; cf. cc. 38–56.

¹⁴ *De pen.* D. 1 d.p. c. 60; ed. Friedberg, pp. 1175–76.

¹⁵ Ed. Friedberg, p. 1182.

¹⁶ *Haec est sexta pars distinctionis, in qua dicitur quod, licet peccata per contritionem et confessionem tollantur, remanet tamen poena in hac vita vel in purgatorio, suppl. nisi esset in summa contritione, de cons. dist. 4 c. Per baptismum* (Glossa ordinaria in Decretum, De pen. D. 1 c. 82, s.v. "si peccatum." [Lyon, 1560]).

¹⁷ Ed. Friedberg, pp. 1183–84.

¹⁸ *Haec est septima pars distinctionis, in qua dicitur quod ubi poenitentia non statuitur a canone, relinquitur arbitrio boni viri, quia Deus inspicit magis mensuram laboris, id est, cordis quam temporis* (Glossa ordinaria in Decretum, De pen. D. 1 c. 84, s.v. "In actione").

All of these canons (cc. 61–87) culminate in Gratian's long synthesis of the tradition in his *dictum* following c. 87.¹⁹ This *dictum*, one of the longest by Gratian in the entire *Decretum*, is present already in an early recension of the work. In it he rehearses the authorities he has adduced, first on one side and then on another, affirming that no one can be cleansed of sin without confession of his own mouth and doing penance, and showing how those authorities that seem to say the opposite may be understood in that light. The resulting presentation is not, however, a simple choice of one side over the other. The primacy of internal contrition and of God's power in forgiving sins is preserved throughout. Nor is it a simple exaltation of the power of priests and an insistence on external confession and works of satisfaction. The Ordinary Gloss sums it up neatly: "In this distinction it is asked whether sins are dismissed through contrition of the heart alone. And one may answer yes, by the intervention of God's grace; but it is nevertheless necessary that confession of the mouth and satisfaction of good works follow, if possible, otherwise the penitent who does not do this will sin gravely through contempt (of the Church)."²⁰

But this is not yet Gratian's last word. He offers a final summary of the foregoing discussion that turns everything back to the judgement of his readers: "We have presented here briefly," he writes, "the authorities and the arguments for both views of confession and satisfaction. It is left to the judgement of the reader which side he will prefer. Both sides have wise and holy men in their favour."²¹ And then, as if to illustrate this point, Gratian concludes Distinction One with a final canon drawn from the *Penitential* ascribed to Archbishop Theodore of Canterbury. This ancient canon begins by posing the same, perennial, dilemma: "Certain people say that sins should be confessed to God alone; so say the Greeks. Others consider it necessary that sins be confessed to

¹⁹ Ed. Friedberg, pp. 1184–87.

²⁰ *In hac igitur distinctione tractatur an sola cordis contritione dimittantur peccata. Et potest dici quod sic, Dei gratia interveniente; necessaria tamen est postea oris confessio et operis satisfactio, si fieri possit, alioquin peccat mortaliter ex contemptu, qui hoc non facit* (Glossa ordinaria in *Decretum*, De pen., d.a. D. 1 s.v. "His breviter").

²¹ *Quibus auctoritatibus, uel quibus rationum firmamentis utraque sententia confessionis et satisfactionis nitatur, in medium breuiter proposuimus. Cui autem harum potius adherendum sit, lectoris iudicio reservatur. Utraque enim fautores habet sapientes et religiosos uiros* (De pen. D. 1 d.p. c. 89; ed. Friedberg, p. 1189). This *dictum* is also present in the earlier version of the text described by Winroth (n. 9 above).

priests; so says almost the entirety of holy Church.”²² By closing with this example of divergent views among wise and holy men (including those in the Greek Church), he reinforces in his students the breadth and scope, the catholicity, of the tradition that they have inherited and that they are beginning to master.

Not a few modern authors like to place this discussion in the context of fierce philosophical and doctrinal debates. For example, Allen Frantzen writes: “By the time Gratian published his concordance to the canons (1140) a serious disagreement about confession had arisen: the followers of Peter Abelard argued that sin could be forgiven so long as the sinner was genuinely sorry for it, but the followers of Bernard of Clairvaux insisted on oral confession, to be followed by penance and absolution. . . . Abelard was seeking to prove that forgiveness depended not on the power of the keys, which Christ had given to the apostles, but on the sinner’s interior disposition.”²³ Others, such as Jean Gaudemet, imagine that Gratian erred, both as a canonist and as a progressive thinker, by being so persistent, and yet so ambivalent, in support of the necessity of oral confession and satisfaction for sins.²⁴ Neither view would seem adequate to encompass the scholastic task undertaken by Gratian. His task as a teacher was to present to his students the whole Christian legal tradition in its full complexity. Like a good law professor, he identified the points of conflict and tension in law and in society, he made magisterial choices in the authorities he presented, and he argued his points as cogently as possible.²⁵ In doing so he ensured that future generations of scholars would have before them, when they considered penance, evidence both for the primacy of interiority and of contrition of the heart in penance, and also for the necessity and the fittingness of external confession to a priest and satisfaction for sins committed. Here, as elsewhere, it was the balance and the tension between freedom (in heartfelt contrition) and order (in formal confession and satisfaction) that Gratian strove to maintain, and no doubt it was his insistence that the external order contribute to the interior freedom that made him such a valued teacher for so many generations of students.

²² *Quidam Deo solummodo confiteri debere peccata dicunt, ut Greci. Quidam uero sacerdotibus confitenda esse percensent, ut fere tota sancta ecclesia* (*De pen.* D. 1 c. 90; ed. Friedberg, p. 1189).

²³ Allen J. Frantzen, *The Literature of Penance in Anglo-Saxon England* (New Brunswick, 1983), pp. 202–03.

²⁴ Gaudemet, “Le débat sur la confession” (n. 9 above).

²⁵ See Silano, “The *Sentences* as a medieval casebook” (n. 3 above).

If the task of the law professor was less to shape doctrine than to introduce students to a complex tradition, the task of prelates in the Church (especially bishops and popes) was increasingly, in the 12th century, that of watching carefully for dangers to the Christian flock and intervening effectively on their behalf through doctrinal and administrative initiatives. Such interventions often took the form of decretal letters or judicial responses to specific matters that had been brought to the bishops' or the pope's attention. But prelates sought also for legislative responses to perceived social and religious needs. The series of four great ecumenical (general) councils held at the Lateran Palace in Rome, beginning in 1123 and culminating with the Fourth Lateran Council of 1215,²⁶ mark a high point in medieval statute-making and legislation. It was in the last of these that important legislation was formulated to meet a perceived need in Christian society in regards to penance.

By 1215, the study of Gratian's *Decretum* in the schools had taught three or four generations of students the importance of both internal and external penance, and had underscored the fruitful balance between the interior freedom of contrition and the external order of confession and satisfaction. The creed *Firmiter credimus*, with which the constitutions of the Fourth Lateran Council begin, recalls the freedom of penance: "If someone falls into sin after having received baptism, he or she can always be restored through true penance."²⁷ There is no mention here of confession to a priest or acts of satisfaction, even though the preceding sentences had insisted on the power of the keys and the necessity of priestly ordination for the sacrament of the Eucharist: "Nobody can effect this sacrament except a priest who has been properly ordained according to the Church's keys, which Jesus Christ himself gave to the apostles and their successors."²⁸ Rather, penance would seem to have clear affinities with the sacrament of baptism, which, the Council affirms, "brings salvation to both children and adults when it is correctly carried out by anyone [*a quocunque*] in the form laid down by the Church."²⁹

But the council fathers, and Pope Innocent III in particular, were not insensitive to the opposite pole in Gratian's presentation of penance. Looking about them they would have seen that the opportunities for

²⁶ See the texts (Latin and English) in *Decrees of the Ecumenical Councils*, trans. Norman P. Tanner, 2 vols (London and Washington, D.C., 1990).

²⁷ Fourth Lateran Council, c. 1; *Decrees of the Ecumenical Councils*, 1:231.

²⁸ Fourth Lateran Council, c. 1; *Decrees of the Ecumenical Councils*, 1:230.

²⁹ Ibid.

orderly confession and penitential satisfaction in the Church were not readily available to all persons or in all places and times. Provisions were available, by means of traditional public penance, for confessing grave sins and for reconciling public sinners,³⁰ but lesser sinners would not have had easy access to a priest for confession or to a judge and physician who could assign health-giving penances. If these, too, are necessary elements of penance, then they should be provided for. Thus in canon 21 of the same council a new provision was adopted that required priests to make available to all adult Christians of both sexes [*omnis utriusque sexus fidelis, postquam ad annos discretionis pervenerit*] the opportunity to confess personally all of their sins at least once a year, without fear of this confession being revealed by the priest, to perform the penance enjoined on them, and to receive the Eucharist at least once a year, at Easter.³¹

This was a bold gesture on Innocent's part, and he can scarcely have been certain how it might be implemented throughout the length and breadth of Christendom. In practice, it soon came to be expected of parish and other priests that they all be trained to serve as physicians of souls and as judges in the internal court of conscience. It came to be required, moreover, that the Christian faithful should learn how to search their consciences, to name their sins individually, to recognize their weight and seriousness, and then to confess them in front of a priest. How these penitential traditions developed in the course of the 13th and subsequent centuries is a long and complex story.³² But that they were widely popular one can scarcely doubt. Certainly by the end of the 13th century the practice of penance had given rise not only to a deep and lasting concern with contrition and the searching of conscience but also to frequent confession to priests and friars, pilgrimages, indulgences, and many other types of popular devotion. These would have been scarcely imaginable without Gratian's insistence that confession and satisfaction for sins was an integral part of the Christian tradition, as well as the legislation of Innocent III that created an institutional form to accommodate it. The balance between freedom and

³⁰ See Mary C. Mansfield, *The Humiliation of Sinners: Public Penance in Thirteenth-Century France* (Ithaca, 1995).

³¹ Fourth Lateran Council, c. 21; *Decrees of the Ecumenical Councils*, 1:245.

³² For an introduction to the relevant literature and problematic, see Joseph Goering, "The Internal Forum and the Literature of Confession," *Traditio* 59 (2004), 175–227; idem, "The Changing Face of the Village Parish II: The Thirteenth Century," in J. A. Raftis, ed., *Pathways to Medieval Peasants* (Toronto, 1981), pp. 323–33.

order, between internal and external manifestations of penance, was never easy to maintain. But by the end of the Middle Ages, the *Catechism* of the Council of Trent was able to look back on the innovations of the 12th and 13th centuries and observe: "Almost all devout Christians are convinced that everything holy and pious conserved in the Church at this time is to be attributed, in large part, to confession."³³

Peter Lombard

Just as Gratian's *Decretum* became the touchstone for juridical education throughout the rest of the Middle Ages and well into modern times, so did Peter Lombard's *Four Books of Sentences* (c.1155) predominate in the faculties and schools of theology.³⁴ Even Thomas Aquinas's *Summa theologiae* never supplanted the four books of "the Master of the Sentences" as the preferred tool for introducing generation after generation of students to the theological mysteries. Having said this much, it must be admitted that Lombard added very little concerning penance to what he found already in Gratian's *Decretum*. If he lets his voice ring out a little in raising a few new questions of particular interest to theologians, he does so in a way that builds upon and transmits to students a tradition that is shared by both theologians and jurists. This should perhaps be insisted upon. A large part of the "old" history of penance, and of scholastic histories in general, would have us believe that jurists and theologians were mostly at odds. A selective reading of the evidence can, of course, support such a theory, especially when read in the light of the bitter criticisms of the law (and of the supreme legislator, the pope) by later theologians and reformers. But to do so is to ignore the close cooperation of both disciplines throughout the

³³ *Ex eo facile intelligent, quod omnibus fere piis persuasum est, quidquid hoc tempore sanctitatis, pietatis et religionis in ecclesia, summo Dei beneficio, conservatum est, id magna ex parte confessionis tribuendum esse (Catechismus ex decreto Concilii Tridentini ad parochos 2.5.36, 4th ed. [Rome, 1907], p. 253; quoted in P.-M. Gy, "Les bases de la pénitence moderne," La Maison-Dieu 117 [1974], 63–85, at 81).*

³⁴ *Magistri Petri Lombardi... Sententiae in IV libris distinctae*, 2 vols., ed. College of S. Bonaventure (Grottaferrata, 1971–81). For a general introduction to Peter Lombard's textbook, see Marcia L. Colish, *Peter Lombard*, 2 vols (Leiden, 1994); and especially Philipp W. Rosemann, *Peter Lombard* (Oxford, 2004). See also the English translation (in progress): Peter Lombard, *The Sentences*, trans. Giulio Silano. Books 1 and 2 were published in 2007 and 2008 by the Pontifical Institute of Mediaeval Studies in Toronto.

Middle Ages. In a very real sense, medieval scholastic theology, in all its majesty, is unimaginable without its sister discipline of the law.

Peter Lombard's discussion of penance begins in Distinction 14 of the fourth book of *Sentences*. The first three books are given over to the discussion of "things," such as God, Trinity, Creation, Grace, Sin, Incarnation, Redemption, and Virtue. Book Four is dedicated entirely to a study of "signs," and for Lombard, the signs that are of true theological significance are those which have been identified in the tradition as "sacred signs" or "sacraments." Lombard's distinction between "things" (Books 1–3) and "signs" (Book 4), inspired by Augustine's division of materials in *De doctrina christiana*,³⁵ may seem an odd and old-fashioned choice. More sophisticated theological programs were available, such as Hugh of St Victor's *De sacramentis christianae fidei* (c.1135).³⁶ But for whatever reason, Lombard's summary won the day in the schools, and, as a result, his way of presenting the tradition to his students shaped the way it was to be treated in the schools for centuries to come.

One consequence, the importance of which it is hard to overestimate for the history of penance, is that Lombard accorded penance a clear and central role among the Church's sacraments, while simultaneously limiting the number of sacraments to be discussed in his work to seven. Neither of these decisions was the outcome of long debate or of deep soul-searching. They seem to have been for Lombard simply obvious and defensible choices that offered a modestly adequate way to present the Church's teachings in the schools. Although no one before had made exactly these choices, neither did anyone rise up to object that Lombard had chosen badly. Henceforth, to a surprising degree, scholastic discussions of the Church's sacramental traditions would take their start from the seven sacraments identified magisterially in Lombard's *Sentences* (baptism, confirmation, eucharist, penance, unction, orders and marriage), and they would accord penance a central place among these sacred signs that remedy sin and confer grace.

A new history of penance will need to come to terms with the implications of Lombard's pedagogical choices. Before Lombard placed penance firmly in the category of "sacramental signs," the term *sacramental penance* or *sacramental confession* would have had no agreed or

³⁵ See Lombard, 1 *Sent.* 1.1 (ed. Grottaferrata, 1:55–61).

³⁶ *Patrologiae cursus completus. Series Latina*, ed. J.-P. Migne (Paris, 1844–91), 176:173–618; Hugh of Saint Victor on the Sacraments of the Christian Faith (*De sacramentis*), trans. Roy J. Deferrari (Cambridge, Mass., 1951).

certain meaning.³⁷ What changed with Lombard was not the practice of penance—that continued as before in its multiplicity of manifestations, whether formal or informal, private or public. What changed with Lombard, importantly, was the precision of theological language and the kind of questions that one asks about penance and confession in the schools. It is from this new precision and these new questions that almost all of the later disputes about penance and its history can be seen to arise.

Lombard begins his discussion of penance with a brief comparison to the sacrament of baptism. “Baptism is simply a sacrament,” Peter avers, “but penance is called both a sacrament and a virtue of the mind” [*sed poenitentia dicitur et sacramentum et virtus mentis*].³⁸ In this sentence he is summing up for his students the salient elements of the teachings of holy Scripture and of the holy fathers of antiquity, who, when they discuss penance, seem to have in mind sometimes one and sometimes the other aspect. Lombard then makes an initial approach to presenting this material by assigning these two aspects respectively to what Gratian had earlier distinguished as interior and exterior penance. Exterior penance (i.e., confession to a priest and satisfaction to God and the Church) are the sacrament, Lombard suggests, and interior penance (i.e., contrition of the heart) corresponds more or less to the virtue of the mind. Lombard then goes on to repeat the authorities, culled from Gratian’s *Decretum*, that exemplify both the importance of confession and external satisfaction for sins (4 *Sent.*, dist. 2)³⁹ and also the importance of penance as interior action or “virtue of the mind” (4 *Sent.*, dist. 3).⁴⁰ Lombard will return to this formulation, and complicate it, at the very end of his treatment of penance, in distinction 22 cap. 2.⁴¹

In distinction 17, Lombard rehearses Gratian’s question of two decades earlier, namely whether contrition of the heart, without confession and external satisfaction, is sufficient for the forgiveness of sins (4 *Sent.*, dist. 17).⁴² Not surprisingly, he comes to the same conclusion as had Gratian, that although sins are forgiven by God as soon as one is

³⁷ See, for example, Anciaux’s judgement that “les maîtres de la scolastique naissante ont été les premiers à étudier la pénitence sous son aspect sacramentel,” *La théologie* (above n. 1), p. 3.

³⁸ Lombard, 4 *Sent.* 14.1.2; ed. Grottaferrata, 2:316.

³⁹ Ed. Grottaferrata 2:316–18.

⁴⁰ Ed. Grottaferrata 2:318–20.

⁴¹ See n. 45 below.

⁴² Ed. Grottaferrata 2:342–55.

truly sorry for them [*contritio*], nevertheless confession to a priest [*confessio*] and exterior penance [*satisfactio*] is in some way also necessary. He offers several suggestions of why confession might be necessary: because it is a kind of punishment in itself, and thus serves as partial satisfaction for sins; because through confession the priest is able to judge better the nature of the sin and thus to prescribe fitting remedies for it; and because confession makes the sinner more humble and more cautious about sinning.

In distinctions 18 and 19 he explores this question further, introducing an element into his account of penance that would henceforth become central to theological discussions. Lombard had mentioned earlier, in passing, that “God granted to priests the power of binding and loosing” sinners (4 *Sent.*, dist. 17, cap. 4.2).⁴³ Now he asks: “If the sin is entirely remitted by God through contrition of the heart and from the moment when the penitent has the intention of confessing, what is afterwards remitted to him by the priest? For I see by what bond he binds him, namely the one of temporal punishment; but not from what he absolves him, and so I ask...If before confession, through contrition of the heart, God by himself, and without the ministry of the priest, both entirely relaxes the debt and interiorly purges the soul from the contagion and stench of sin, what is it that the priest cleanses and remits? Where are those keys which the Lord gave to Peter and his successors, saying: ‘I will give you the keys of the kingdom of heaven, and whatever you will bind upon earth, shall be bound also in heaven; and whatever you will loose upon earth, shall be loosed also in heaven’” (4 *Sent.*, dist. 18 cap.1)?⁴⁴

This was a fruitful question, leading Lombard and his students once again through the various patristic authorities (most taken directly from Gratian’s *Decretum*) and theological arguments that might illuminate the complexities of a common and steadfast catholic tradition. At one point Lombard exclaims:

⁴³ Ed. Grottaferrata, 351. Lombard had in mind two gospel passages. In one Jesus says to Peter: “I will give you the keys of the kingdom of heaven, and whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven” (Mt 16:19). In the other he says to the Apostles: “Receive the Holy Spirit. Whose sins you shall forgive, they are forgiven them, and whose sins you shall retain, they are retained” (John 20:22–23).

⁴⁴ Ed. Grottaferrata, 355.

Behold, what varied opinions are expressed by the doctors on these subjects! In so much variety, what is to be held?—We may well say and hold this: that God alone remits and retains sins, and yet he confers upon the Church the power of binding and loosing. But he binds and looses in one way, and the Church in another. For he so remits sins by himself alone that he cleanses the soul from inward stain and absolves from the debt of eternal death.

The rest of distinction 18 and all of distinction 19 then explore the limited, but very real, ways that the priest can be understood to loose and bind sins exteriorly in the sacrament of penance.

Finally, at the end of distinction 22, Lombard returns to his starting point. He had begun by using Gratian's distinction between interior and exterior penance as a handy way of presenting the difference between penance as an (interior) virtue of the mind and penance as an (exterior) sacrament. Now he asks whether every kind of exterior penance is a sacrament, and if not, which kinds should be given that name (4 *Sent.* 22.2).⁴⁵ Here Peter seems mostly interested in introducing his students to the technical language of theology concerning the sacraments. He begins the exercise by offering a simple definition, "a sacrament is a sign of a sacred thing," and then applying it to penance. Some would hold that every type of outward penance is a sacrament, that is a sign of inner penance and contrition of the heart. But if so, then another common definition of the Church's sacraments, that they effect or cause that which they signify, is not met by the sacrament of penance, because there it is the inner penance that is the cause of the outer, not vice versa. Lombard suggests to his students that they might save the distinction by arguing that only those sacraments instituted in the new testament, such as baptism, confirmation, and the Eucharist, cause that which they signify. Other sacraments, such as marriage and penance, that existed in some form even before Christ, indeed from the beginning of time (they were instituted for our first parents, Adam and Eve), perhaps need not conform to this definition.

But, not entirely satisfied with that way of presenting the material, Lombard suggests another, more sophisticated resolution by taking up a third definition, that of "sacrament" as being comprised of three elements: the sacrament alone [*sacramentum tantum*], the sacrament and the thing signified [*sacramentum et res*], and the thing alone [*res tantum*].

⁴⁵ Ed. Grottaferrata, 389–90; compare the discussion at n. 38 above.

In these terms, one can understand interior and exterior penance as being, together, one sacrament. In that case, exterior penance is the *sacramentum tantum*, interior penance the *sacramentum et res*, and the *res tantum* is remission of sins. Thus inward penance [*sacramentum et res*] is the sacrament or sign of outward penance, which it both signifies and causes. Outward penance is the sign [*sacramentum tantum*] of both inward penance and of the remission of sins [*res tantum*].⁴⁶

This theological interest in definitions⁴⁷ led 13th-century schoolmen to a new appreciation of another aspect of penance that had found little place in earlier teaching, that of the priestly absolution of the sinner. Gratian and Lombard had presented the long and rich tradition of penance primarily in terms of three elements that concern the sinner: contrition, confession, and satisfaction. But reflection on the definition of sacrament above, and on the role of the Church in the sacrament of penance, caused some students to wonder about the significance of the priest's words of absolution in the sacrament. Should these words be understood as the *sacramentum tantum*, that is as an external and visible sign of an invisible thing [*res*], the remission of sins. Or should the words be taken as the *sacramentum et res*—like the words of the baptismal formula, “I baptize you...” or the words of consecration in the Mass, “This is my body...”—where the words both signify and effect, in a way, the thing that they signify.⁴⁸ This discussion, too, was very fruitful in the schools, with some masters advocating a deprecativ form of absolution, “May God absolve you of your sins,” and others opting for the declarative form: “I absolve you of your sins,” that would express more clearly the priest's role in the sacrament.⁴⁹ Both forms were useful in teaching because both conveyed something of the truth of the penance as believed and practiced over many centuries. Both the deprecativ and the declarative forms continue in use down to the

⁴⁶ 4 *Sent.* 22.2.5; ed. Grottaferrata, 389–90.

⁴⁷ Note that a keen interest in definitions is one of the marks of distinction between theologians and jurists. One of the rules of law learned by jurists in the schools is taken from Justinian's *Digest*, “All definitions in law are dangerous” [*Omnis definitio in jure periculosa est*], *Dig.* 50, 17, 202.

⁴⁸ For a recent and wide-ranging discussion with respect to baptism and the Eucharist, see Irène Rosier-Catach, *La parole efficace: Signe, rituel, sacré* (Paris, 2004).

⁴⁹ Thomas Aquinas famously wrote a short work, *De forma absolutionis*, in response to an inquiry on this point, in which he defended the appropriateness of the declarative form, “ego te absolvo.” For a list of editions and a brief commentary see Jean-Pierre Torrell, *Saint Thomas Aquinas*, 1, *The Person and his work*, trans. Robert Royal (Washington, D.C., 1996), pp. 167–68, 353.

present day, although the latter form was impugned by many at the Reformation.⁵⁰

As with the words of priestly absolution, so many other aspects of penance as taught in the schools of the 12th and 13th century became fraught with controversy by the end of the Middle Ages. Ideas that had been relatively unproblematic when used in the classroom to introduce students to the language, content, and methods of a scholastic discipline came to be the focus for emotional and hostile debate. Is penance a sacrament? Must one (may one!) confess to a priest? Does the priest exercise any real authority to loose and bind sins? Are such works as fasting, self-mortification, pilgrimage, prayers, and indulgences necessary? Are they permissible? These, and many other such questions, ceased to be matters of academic interest by the end of the Middle Ages and became issues over which blood was spilt and Christians were seemingly irrevocably divided. Is it possible for a new history of penance to shed any new light on this old and unhappy story?

Perhaps. If we are right in thinking that the growth of a common scholastic culture throughout Europe in the 12th and 13th centuries was the most significant development affecting the history of penance in these centuries, then we might look to changes in that same scholastic culture during the subsequent years to identify possible fault lines and signs of disintegration. Such an investigation is, of course, far beyond the scope of this essay, but a few remarks might be made to suggest a way forward.

One thing to note is the growth of a polemical spirit in the schools. Intellectual factions and fashions seem to have played an increasing role in both faculties during the 14th and 15th centuries. One sees a new tendency toward the growth of "schools of thought" formed around an idea ("conciliarism," "nominalism," etc.) or a place (Bologna, Padua, Paris) or a master (Aquinas, Scotus, Ockham). In this new context, the old academic task of presenting an entire intellectual tradition, replete with conflicts and disputes, was perhaps no longer tenable. Clear and distinct lines of development supporting one position and opposing others came to be preferred, and the complexities of the actual historical tradition to be downplayed and even distorted.

⁵⁰ See the discussions and the canons of the council of Trent (1545–63), sessions 6 and 14, *Decrees of the Ecumenical Councils* (above, n. 26), 2:677, 707–08, 711.

A measure of the extent of this change can be seen in the transformation of one particular academic exercise, the *disputatio* or disputed question. In 12th- and 13th-century schools, the disputed question served, like the lecture, to introduce students to the complexities of a common and shared tradition. The master would pose a question for disputation (e.g., "It would seem that one need not confess to a priest"), and then would marshal the best evidence he could find, including rational arguments and authoritative statements of sacred scripture (including not only the Bible but also the liturgy, Church law, and the writings of the Church's doctors) on both sides of the question. He would then give his own magisterial determination of the question, not by choosing one side or the other but by showing the strengths and weakness of each argument and expounding and interpreting the meanings of the authorities invoked. The student would come away from this exercise with a full, rich, and complicated appreciation of the tradition of which he was a part.⁵¹ During the following centuries, the disputed question would become a more antagonistic and polemical exercise. Already in 1317, Pope John XXII complained about the masters of Theology at Paris who, "neglecting useful and necessary doctrines, spend their time on curious, useless and vain questions and subtleties of philosophy by which the discipline itself of study is destroyed, the splendor of its light dimmed, and the subsequent usefulness of the students impeded in a number of ways."⁵² Long before the 16th century, the university disputation had ceased to be a way to present a balanced view of a tradition, and had become instead the defence of a particular thesis against all comers.⁵³ When Martin Luther presented for disputation his 95 theses on indulgences in 1517, his purpose was not to illustrate and illuminate memorably the Church's perennial teaching but, rather, to defend to the best of his ability his own teaching on each point. In this context

⁵¹ For a brief but thoughtful overview of the early development of disputed questions in the 12th- and 13th-century schools, see Marie-Dominique Chenu, *Toward Understanding St Thomas*, trans. A.-M. Landry and D. Hughes (Chicago, 1964), pp. 85–96.

⁵² *Chartularium Universitatis Parisiensis*, II, 200. Quoted in Brian Lawn, *The Rise and Decline of the Scholastic 'Quaestio disputata,' with Special Emphasis on its Use in the Teaching of Medicine and Science* (Leiden, 1993), p. 126.

⁵³ See Vinzenz Pfnür, "Die Reformation zwischen Kontroverse und Verständigung im Spiegel der Disputation als Indikator des Verlaufs der Reformationsgeschichte. La Teologia controversistica. Struttura, tecnica ed incidenza del modello della 'disputatio'," in *Storia della teologia IV: Età moderna*, ed. Facoltà Teologica dell'Italia Settentrionale direzione di Giuseppe Angelini, Giuseppe Colombo, Marco Vergottini (Casale Monferrato, 2001), pp. 125–201.

it is easy to see how disputations about penance in the later medieval schools could serve to build up factions and to polarize opinions rather than to find a harmony in the seeming dissonance of diverse opinions and practices, as was the ideal of an earlier period.⁵⁴

Of all the divisions and fractures in the medieval schools of the later Middle Ages, however, probably none is more significant for the history of penance than that between the faculties of Law and Theology. The growing autonomy and professionalism of both the legal and the theological disciplines must have contributed to the rift. Both enjoyed a good deal of authority and prestige in society, and along with their success came a sense that each discipline could perhaps survive and thrive independently of the other, and even independently of the ecclesiastical institutions that gave birth to both. One finds already in the 13th century a sibling rivalry between these two senior university disciplines, but by the 15th century there were signs of genuine antagonism and deep mutual distrust.⁵⁵ Experience would suggest that both disciplines need each other, and that when one or the other of these faculties is ignored or suppressed in the university, both tend to lose their authority. Gratian and Lombard, law and theology, provide two different but mutually supportive ways of telling the story of penance in the schools and of introducing students to the penitential tradition in its entirety. Without theology, the jurist is in danger of treating penance as primarily a judicial exercise, and of forgetting that it is grounded ultimately in the mutual love of the Trinity and in Christ's revelation of the divine mercy.⁵⁶ Without law, the theologian feels increasingly free to follow whatever interpretations please him and to ignore those that do not, as Peter Lombard warns in the beginning of his *Sentences*.⁵⁷

If, then, we are to cultivate a new history of penance that is more adequate to the lived reality that it recounts, it will be important to

⁵⁴ "A harmony of discordant canons" [*concordia discordantium canonum*] is, of course, the title that Gratian, in the 12th century, gave to his *Decretum*. See Stephan Kuttner's famous essay, *Harmony from Dissonance: An interpretation of medieval canon law* (Latrobe, Pa., 1960).

⁵⁵ See, for example, John Scott, "Theologians vs Canonists on Heresy," in *William of Ockham: Dialogus. Latin Text and English Translation*, Auctores Britannici Medii Aevi, accessed on 11 April 2005 at www.britac.ac.uk/pubs/dialogus/ockdial.htm. For the 16th century, see Giulio Silano, "Paolo Sarpi and Canon Law," in *Going for Baroque: Cultural Transformations 1550–1650*, ed. Francesco Guardiani (New York, 1999), pp. 93–110.

⁵⁶ See Rosemann, *Peter Lombard* (above n. 34), pp. 165–66.

⁵⁷ Lombard, 1 *Sent.*, prologue, 3 (quoting Hilary); ed. Grottaferrata, 1:3–4.

unravel the threads of this late medieval “conflict of the faculties.”⁵⁸ In doing so, it will also be important to recall that penance itself, as a sacrament and as a virtue, is a much wider and deeper phenomenon than one would suspect by listening only to the debates of professional jurists and theologians. The major developments in penitential doctrine in the Middle Ages are best understood, it is true, in terms of the scholastic context that nurtured them, but these developments, and the arguments that they engendered, should not be given more weight than they deserve. Our task, rather, is to do as Gratian and Peter Lombard did, namely, to pass on a rich, complicated, and balanced account of the penitential tradition as it was practiced and understood in the Middle Ages to a new generation of eager students.

⁵⁸ A reference to Immanuel Kant’s famous essay of 1798, *Der Streit der Fakultäten*, in which the senior faculties of the medieval university, Law and Theology, are finally seen to be overthrown by the undergraduate faculty of arts (i.e., philosophy).

PENITENTIAL THEOLOGY AND LAW AT THE TURN OF THE FIFTEENTH CENTURY

Henry Ansgar Kelly

To focus my treatment of penance in the late Middle Ages, I will concentrate on England during and immediately following the time of Geoffrey Chaucer (c. 1343–1400). It is well known that Chaucer himself dealt extensively with the sacrament of penance in his Parson's Tale.¹ But even though he lived at the end of the 14th century, he relied for his ideas on confession mainly on the presentations originating with two Dominican friars of the early 13th century, namely, Raymond of Peñafort in his *Summa de penitentia* and William Peraldus in his treatise on the vices, especially as adapted and summarized later in the century by another Dominican, Laurence of Orléans, as the *Somme le Roi*. But Chaucer was undoubtedly also aware of many later developments, which can be seen in two treatises, one from the late 14th century and the other from the early 15th, that both preserve the traditions enshrined by Peñafort and Peraldus and also reveal something of the sacramental and juridical innovations in penance arising after nearly two centuries. These treatises are John Burgh's *Pupilla oculi* and William Lyndwood's *Provinciale*. This essay focuses on the works of Burgh and Lyndwood and concludes with a brief review of their connection to Chaucer's works.

Burgh was a Cambridge scholar; he received his master's degree there by 1370 and his doctorate in theology by 1384, and he served as rector of the university from 1384 to 1386. One Cambridge manuscript of his book gives 1380 as the date of its compilation, and another puts it at 1385. The last record of him is a permission to hear confessions in the diocese of York, dated January 12, 1398.²

¹ Geoffrey Chaucer, *The Canterbury Tales*, ed. Larry D. Benson (Boston, 2000), The Parson's Tale, pp. 270–309. N.B. In citing medieval texts, both vernacular and Latin, I follow the modern distributions of the allographs *i/j*, *u/v*, and *i/y*; and in medieval Latin texts cited from editions with classicized spellings, I change *ae* and *oe* back to *e*.

² A. B. Emden, *A Biographical Register of the University of Cambridge to 1500* (Cambridge, 1963) [hereafter *Cambridge*], p. 107. I use the Paris 1527 edition of the *Pupilla oculi*, which is unpaginated. I cite it according to Burgh's own textual divisions: Part V deals

Lyndwood, born around 1375, started out his higher studies at Cambridge and received his doctorate in both of the learned laws (canon law and Roman civil law) by 1407, either at Cambridge or at Oxford. He had a long career as jurist, king's clerk, and diplomat, serving as official of Canterbury (the highest ecclesiastical judge in the province next to the archbishop himself) from 1417 to 1431 and as bishop of St David's from 1442 until his death in 1446. He wrote his commentary on the constitutions of the province of Canterbury between 1422 and 1430 and finished his index to the work early in 1434.³

Both men were writing for an English audience, but they were abreast of the latest Continental commentators. For an understanding of their ideas of penance, it will be useful first to review the authorities upon which they drew.

The Background: Decrees and Commentaries

Let us look at a sequence of important works from the mid-12th century and early 13th century that treated penance and confession and that acquired significant glosses. The subject was dealt with at length by Gratian of Bologna in the middle of the 12th century in his large treatise *De penitentia*, which was incorporated into his *Decretum*. John Teutonicus, drawing on Laurence of Spain, compiled his Ordinary Gloss to Gratian at the time of the Fourth Lateran Council (1215), and in the next decade Raymond of Peñafort produced his *Summa* (1222–25), which he revised after compiling the *Liber Extra* or *Decretals of Gregory IX* in 1234. The Gloss to Gratian was also revised in light of the *Liber Extra*, by Bartholomew of Brescia.⁴

with penance and it is divided into numbered chapters, which are in turn divided into lettered sections. The London 1510 version is on microfilm in the series, *Early English Books, 1475–1640*, reel 120 no. 8 (STC n. 4115), and online at EEBO: <http://eebo.chadwyck.com/home>.

³ Emden, *Cambridge*, pp. 379–81; see also A. B. Emden, *A Biographical Register of the University of Oxford to A.D. 1500*, 3 vols (Oxford, 1957) [hereafter *Oxford*], 2:1191–93; C. R. Cheney, "William Lyndwood's *Provinciale*," *The Jurist* 21 (1961), 405–34, updated in Cheney's *Medieval Texts and Studies* (Oxford, 1973), 158–84. I use the Oxford 1679 edition of the *Provinciale, seu Constitutiones Angliae* (repr. Farnborough, 1968), which also contains the 13th-century legatine constitutions of Cardinals Otto and Ottobono, the annotations of John Acton (d. 1349), and an appendix of English constitutions (cited as *AppProv*). On Acton, see Emden, *Oxford*, 1:11–12.

⁴ Gratian's *Decretum* is in vol. 1 of *Corpus iuris canonici*, ed. Emil Friedberg, 2 vols (Leipzig, 1879–81) [hereafter *CIC*]; the *Liber Extra* [hereafter *X*] is in vol. 2, along with

Gratian considered the oral confession of sins optional, but Peter Lombard in his *Sentences*, produced a short time later (before 1160), considered it mandatory, and at the Fourth Lateran Council in 1215 the annual confession of all serious sins became the rule.⁵ The Fourth Lateran requirement, that all sins be confessed and their circumstances determined,⁶ stimulated another kind of approach to confession, namely, treatises on the vices or deadly sins.

The most popular of them, the *Summa de vitiis* of Peraldus, was compiled around 1236. But though Peraldus was a Dominican friar like Peñafort, he had no advanced degree, either in canon law or theology, and his treatise is not about confession at all. He takes no notice of the obligation to confess (to one's own priest) and ignores Gratian's canons and the new laws of the *Liber Extra*. He avoids "casuistry," that is, the distinguishing of fine points and the solving of dilemmas in cases of conscience. His work is mainly an anthology of passages from Scripture and the Latin Fathers, especially Augustine, Ambrose, and Gregory; even his modern authorities, notably Bernard and the elder Guigo the Carthusian (d. 1136), antedate the practice of auricular confession. Greek Fathers are very rarely cited, with the notable exception of John Damascene. Peraldus's pagan authorities are, principally, Seneca, Cicero, and Macrobius; certainly no Aristotle and none of the Greco-Arabic learning of the scholastics.⁷

the *Liber Sextus* of Boniface VIII [hereafter *Sext*], the *Clementine Constitutions* [hereafter *Clem.*], the *Extravagants of John XXII*, and the *Common Extravagants*. All of these works, accompanied by the Ordinary Glosses and other commentaries, are to be found in the official Roman edition of 1582, *Corpus juris canonici* (CJC), 3 vols, available online at <http://digidev.library.ucla.edu/canonlaw/>. Note that the Lyons 1606 edition of the CJC has the same pagination as the 1582 edition in vol. 2 (*X*) and vol. 3 (*Sext* etc.), although the pagination is different in vol. 1 (Gratian).

⁵ See Joseph Goering in this volume for a somewhat different account of Gratian, Lombard, and the decree of Fourth Lateran (*Omnis utriusque*).

⁶ *X* 5.38.12, *Omnis utriusque* (Innocent III at the Fourth Lateran Council): "Omnis... omnia sua solus peccata... confiteatur"; "sacerdos autem sit discretus, ... diligenter inquirens et peccatoris circumstantias et peccati" (*CIC* 2:887). That is, "Everyone, by oneself, is to confess all of one's sins"; "the priest is to be discreet, inquiring about the circumstances of both sinner and sin." This is canon 21 of the Fourth Lateran Council [hereafter cited as Lateran IV]. See *Decrees of the Ecumenical Councils*, ed. and trans. Norman P. Tanner, 2 vols (London and Washington, D.C., 1990), 1:245.

⁷ Antoine Dondaine, "Guillaume Peyraut: Vie et oeuvres," *Archivum Fratrum Praedicatorum* 18 (1948), 162–236; Philippe Delhay, "Guillaume Peyraut," *Dictionnaire de Spiritualité*, vol. 6 (Paris, 1966), cols 1229–34. For Guigo, cited as Guido, see Peraldus, *De vitiis, de luxuria* 3.H (Venice, 1497), fol. 16, citing the *Meditationes* of Guigo I, c. 5 (*Patrologiae cursus completus. Series Latina*, ed. J.-P. Migne [Paris, 1844–91] [hereafter PL], 153:610).

Raymond of Peñafort's work, in contrast, is very sophisticated, but, in spite of its usual title, it has very little to do with penitence, or penance.⁸ Although Peñafort says that the purpose of his *Summula* is to aid the brothers of his own or other orders in doubts about the judgement of souls in the penitential forum ("si quando fratres ordinis nostri vel alii circa iudicium animarum in foro penitentiali forsitan dubitaverint"),⁹ and he does discuss the pros and cons of many cases, he deals directly with penitence, confession, and absolution only in the final title: book 3, title 34, *De penitentiis et remissionibus*. This, in fact, is the only part of the *Summa* that is drawn upon in Chaucer's Parson's Tale.

Academic theologians, spearheaded by other Dominicans, especially Albert the Great and Thomas Aquinas, working in light of Aristotle's *Ethics* and other newly available works, were greatly enlarging the moral complexity of questions of conscience, and jurists like Cardinal Hostiensis (d. 1271) were doing the same in the field of canon law. Some authors, however, remained conservative. As I mentioned at the beginning, Laurence of Orléans was a Dominican who produced a popular distillation of Peraldus's treatment of the vices, calling it *Somme le Roi* [The King's Summa]. Though writing as late as 1279, he shows himself unaware not only of earlier jurists such as Peñafort but also of his own contemporaries.

Finally, in the 1290s, another Dominican, John of Freiburg, set about updating Peñafort's work, and in 1298 he produced his *Summa confessorum*, at the last minute taking into account the new collection of canon law compiled by order of Pope Boniface VIII, the *Liber Sextus* or

⁸ Raymond divided his *Summa* into three parts: 1) crimes against God (for example, simony, heresy, perjury, sorcery); 2) crimes against one's neighbor (homicide, theft, etc.); and 3) irregular ministers, impediments to ordination, dispensations, compurgation, sentences, and, finally, "penitences and remissions." He divided the *Liber Extra* into five books, with book 5 containing most of the legislation on crime and punishment: criminal trials (title 1), simony (t. 3), Jews (t. 6), heresy (t. 7), homicide (t. 12), plunder and arson (t. 17), theft (t. 18), purgation (t. 34), punishment (t. 37), penitences and remissions (t. 38), excommunication (t. 39).

⁹ Raymond of Peñafort, *Summa de paenitentia*, Proem 1, ed. Xaverio Ochoa and Aloisio Diez, *Universa Bibliotheca Iuris* 1B (Rome, 1976), col. 277. The original *Summa* consisted of three parts (as outlined in the previous note), to which another work of Raymond's (adapted from a similar work of Tancred of Bologna), *Summa de matrimonio*, was added as a fourth book. Ochoa and Diez edit this small summa separately, at the beginning of vol. 1C (1978), cols 897–998. Vol. 1A contains Raymond's early *Summa de iure canonico*.

Sext, issued earlier that year.¹⁰ At the same time, another canonist, Guy of Baysio, “The Archdeacon,” definitively updated Gratian’s *Decretum* by producing his *Rosarium*, a supplement to the Ordinary Gloss; he finished it on 25 January 1300.¹¹

Freiburg’s *Summa confessorum* became extremely popular, both in itself and in adaptations and summaries—often unacknowledged. One of the unacknowledgers was the learned English jurist and parish priest William Paul (in Latin, *de Pagula*), whose *Oculus sacerdotis*, composed during the years 1320–27, enjoyed great circulation in England.¹² Paul’s work, in turn, was summarized and systematized by John Burgh in his *Pupilla oculi*.¹³ It is to this last work, above all, that we should look for the most current thinking on confession in Chaucer’s time—and not only on confession, for it deals with the other six sacraments as well, and with the articles of faith, the ten commandments, the virtues and sins, and also other areas of concern for parish priests, including tithes and offerings, fasts and feasts, burials and wills.

John Burgh on Confession

Like William Paul, John Burgh makes use of Freiburg’s *Summa confessorum*, but, unlike him, he is scrupulous about citing him. He also goes back to Freiburg’s sources and, in addition, draws on some independent sources of his own. Thus, although Leonard Boyle claims that Raymond

¹⁰ Leonard E. Boyle, “The *Summa confessorum* of John of Freiburg and the Popularization of the Moral Teaching of St Thomas and of Some of His Contemporaries,” *St Thomas Aquinas, 1274–1974: Commemorative Studies*, Foreword by Étienne Gilson, 2 vols (Toronto, 1974), 2:245–68, repr. in L. E. Boyle, *Pastoral Care, Clerical Education and Canon Law, 1200–1400*, Variorum Reprints (London, 1981), ch. 3, at 248–49.

¹¹ The Archdeacon’s student, John Andrew (Johannes Andreae), produced a gloss to the *Sext* in 1301, and the Archdeacon himself did his own version later, between 1306 and 1311; see K. W. Nörr, “Guido de Baysio,” *New Catholic Encyclopedia*, 2nd ed., 15 vols (2003), 6:562; and C. M. Rosen, “Johannes Andreae,” *ibid.*, 7:881–82.

¹² Boyle, “*Summa confessorum*,” pp. 262–63; and see L. E. Boyle, “The *Oculus sacerdotis* and Some Other Works of William of Pagula,” *Transactions of the Royal Historical Society* 5.5 (1955), 81–110 (repr. in Boyle, *Pastoral Care*, ch. 4); on William’s name, see L. E. Boyle, “The *Summa summarum* and Some Other English Works of Canon Law,” *Proceedings of the Second International Congress of Medieval Canon Law*, Boston College, 12–16 August 1963, ed. Stephan Kuttner and J. Joseph Ryan, *Monumenta iuris canonici*, Ser. C.1, Subsidia, 1 (Vatican City, 1965), pp. 415–56 (repr. in Boyle, *Pastoral Care*, ch. 15), at 419 n. 20; even though he signed himself as “Poul,” I follow Emden, *Oxford*, 3:1436–37, in regularizing it as “Paul.”

¹³ Emden, *Cambridge*, p. 107.

of Peñafort's *Summa* was considered obsolete by 1300,¹⁴ Burgh cites it regularly for specific points. He also goes beyond Freiburg's Dominican theologians and cites the Franciscan John Duns Scotus on occasion.¹⁵

Burgh's treatment of the sacrament of penance can be relied upon as giving his own best judgement of the main issues that parish priests should know about, but, of course, we cannot be certain how effective his handbook was in his own day or whether any particular accounting came to the attention of Chaucer or any of his contemporaries, or whether Burgh's work corresponded to other authorities of the time.

Burgh: How Penance Works

Burgh divides his treatment of penance into 27 chapters. These are explained in detail in the Appendix below (pp. 267–303), but as an example of a newish subject in Burgh that was not treated by Peñafort, let me take up the matter of attrition. A range of meanings seems indicated in 14th-century works. In his *Troilus and Criseyde*, Chaucer has Pandarus use the term when he asks Troilus, “Hastow som remors of conscience,/And art now falle in som devocioun,/And wailst for thi synne and thin offence,/And hast for ferde caught attricioun?” (1.554–57).¹⁶ That is, “Have you some remorse of conscience and have you fallen into some devotion, bewailing your sin and offense, and have you caught attrition from fear?” Since attrition is associated with fear here, it might seem that it is being used in the modern sense, of sorrow prompted by inferior motives, specifically, fear of eternal punishment. This is the meaning that was enshrined by the Council of Trent (as we will see below). But though it can be found in the 14th century,¹⁷ it is more likely that Chaucer's meaning matches that of Alan of Lille, one of the first elaborators of the term, namely, that Troilus is a beginner at repentance.¹⁸ A definition like this is found in an English treatise

¹⁴ Boyle, “*Summa confessorum*,” p. 268.

¹⁵ A list of Freiburg's sources is given in vol. 6, pp. xxxviii–xlii, of *Die “Rechtssumme” Bruder Bertholds: Eine deutsch abecedarisch Bearbeitung der “Summa confessorum” des Johannes von Freiburg*, ed. Marlies Hamm, Helgard Ulmschneider, et al. (Tübingen 1980–). Vols 1–4, 6–8 have appeared.

¹⁶ Chaucer, *Troilus and Criseyde*, ed. Stephen Barney, *The Riverside Chaucer*, gen. ed. Larry D. Benson (Boston, 1987), pp. 471–585, at 481.

¹⁷ In Durand de Saint-Pourçain, *In 4 Sent.* D. 17, qq. 2, 5 (Venice, 1571, fol. 339).

¹⁸ Alan of Lille, *Theologicae regulae*, Reg. 85, PL 210:665: “Similiter malum, quod est in homine, ut fornicatio, vel aliud criminale peccatum, aut continuatione augetur, si homo perseveret actualiter in peccato, aut attritione remittitur, ut quando aliquis dolet

of Burgh's time, *The Cleansing of Man's Soul*: attrition is sorrow that is imperfect for the reason that one has not completely turned from sin because of hardness of heart.¹⁹

Burgh, for his part, follows the scholastic distinction started by William of Auvergne (d. 1249), that attrition is sorrow without the benefit of sanctifying grace.²⁰ Here is what Burgh says, attributing his doctrine to Thomas Aquinas:

se hoc commisisse, cessans ab opere, quamvis non peniteat perfecte; aut contritione dimittitur, quando plenarie de peccato convertitur. Sunt enim multi, qui dolent se peccasse, et corde atteruntur, non tamen plene conteruntur, nec firmum habent propositum non relabendi, nec ore confitentur. Isti minus mali fiunt, sed desinunt non esse mali, nisi perfecte conterantur" [Similarly, what is evil in a person, like fornication or some other criminal sin, either continues to grow if that person perseveres in the sin, or it is remitted by attrition, as when one sorrows over committing it and stops doing it, even though not repenting perfectly; or it is dismissed altogether by contrition, when one is fully converted from the sin. For there are many who sorrow over sinning and are attrite in their heart, but not fully contrite, having no firm intention of not falling again, and not confessing it orally. They become less bad, but do not cease being bad until they are perfectly contrite]. Paul Anciaux, *La théologie du sacrement de pénitence au XII^e siècle* (Leuven, 1949), pp. 473–75, shows that Alan is drawing on Simon of Tournai, who seems to have invented the term *attritio* in its penitential context. According to Simon, who began teaching at Paris slightly before Alan, attrition is sorrow for sin without the intention of not sinning again and without the intention of confession, whereas contrition is attrition plus the two intentions.

¹⁹ *The Cleansing of Mannes Sowle*, Oxford, Bodleian Library, Bodley 923 (aka 153 exp) (s.c. 27701), fol. 32rv: "A mannes hert may be seid hard when hit is touched and smiten with the honde of God by inspiracion to make him sorowe perfetely for sinne, and, be cause of the hardnesse of the hert, he yeldith him nat fully to the honde of God; but it is sumdele made lasse, in as mochel as he beginneth or purposeth to turne and sorowe in partie for sinne. And for he is nat hooly turned ne soroweth nat yet perfetely, therfor this sorowe is cleped attricion and nat perfite contricion."

²⁰ William of Auvergne, *De sacramento penitentie*, ch. 6: "Si quis querat que sit differentia inter attritionem et contritionem, et inter motus prevenientes gratiam gratum facientem et motus ipsius gratie... dico... quod attritio ad contritionem sic est sicut vulneratio non letalis ad occisionem, et gratia preveniens ac preparans ad gratiam gratum facientem sicut calefactio ad arsonem," etc. [If one asks the difference between attrition and contrition, and between the movements going before graced-making grace and the movements of that grace itself... I say that attrition is to contrition as a nonlethal wound is to a killing, and prevent and preparatory grace is to graced-making grace as warming is to burning]. See Guilielmus Alvernus, *Opera omnia*, 2 vols (Paris, 1674), 1:466, col. 2 H. After more comparisons of this sort, William says (1:467 col 1B): "Inter contritionem vero [imperfectam et] perfectam, et operationes gratie prevenientis et consummatas, non est medius, immo ipsa gratia gratum faciens terminus est totius hujus preparationis et finis quo per illam intenditur. Nec differunt tantum secundum magis et minus, immo differunt secundum speciem forsitan, gratia preveniens seu preparans et gratia gratum faciens sive justificans quemadmodum lumen quod est in umbra et solis radius, aut quemadmodum splendor lune et fulgor solis" [But between [imperfect and] perfect contrition, and between the operations of prevent grace and the fulfilled operations of grace there is no midpoint, but rather graced-making grace

Note that attrition can become contrition: for sorrow willingly assumed for one's sins, etc., when it is imperfect and unformed because of the lack of graced-making grace, is called attrition. But if the motion of such sorrow remains uninterrupted until such grace is infused, and remains with it, then it is called contrition, according to Aquinas.²¹

Aquinas, however, rejects the ideas of an uninterrupted transformation of attrition into contrition. Rather, he says that the unformed sorrow does not remain but is replaced by perfect sorrow when charity comes.²² The means of progressing from attrition to contrition is given in a less technical citing of Aquinas by James Palmer, a canonistically trained clerk of King Edward III, who died in 1375, in his encyclopedic *Omne bonum*.²³ Drawing on the Archdeacon's *Rosarium*, Palmer presents attrition as an imperfect sorrow that induces one to assent to perfect sorrow:

Thomas of Aquino says that attrition induces assent to perfect contrition. Whence in material things we say that something is "attrite" if it is crushed into pieces to a certain extent but not perfectly, whereas "contrition" is used when everything is ground evenly into the smallest pieces. Just so, on the spiritual level attrition signifies a certain displeasure over commit-

is itself the terminus of all of this preparation and the goal that is intended by it. Nor do they differ only according to more and less, but perhaps by species, preventive or preparatory grace being like light in shadows and graced-making or justifying grace being like the rays of the sun, or the one being like the light of the moon and the other like the effulgence of the sun]. For a discussion of other aspects of William on penance, see Lesley Smith, "William of Auvergne and Confession," *Handling Sin: Confession in the Middle Ages*, ed. Peter Biller and A. J. Minnis (York, 1998), pp. 95–107.

²¹ Burgh, V.2 §C (= *Pupilla oculi* book 5, ch. 2, §C): "Nota quod attritio potest fieri contritio: quia dolor voluntarie assumptus pro peccatis etc., quando est imperfectus et informis propter defectum gratie gratum facientis, dicitur attritio. Si tamen maneat huiusmodi motus doloris non interruptus quousque infundatur gratia gratum faciens, et maneat cum illa, tunc dicitur contritio, secundum Thomam."

²² Aquinas, *In quattuor libros Sententiarum* [hereafter *In 4 Sent.*] lib. 4 17.2.1 resp.: "Quidem enim dicunt quod attritio fit contritio, sicut fides informis fit formata; sed hoc, ut videtur, non potest esse.... Antequam gratia infundatur non est habitus a quo actus contritionis postea elicitur, et sic nullo modo attritio potest fieri contritio" [For some say that attrition becomes contrition, just as unformed faith becomes formed faith; but this, it seems, cannot be true.... Before grace is infused, there is no habit from which an act of contrition can later be elicited, and so there is no way that attrition can become contrition]. In the response to the second objection, he says: "Dolor ille qui erat informis non manet, caritate adveniente" [The sorrow that was unformed does not remain when charity comes]. Text can be found in *Opera omnia*, 25 vols (Parma, 1852–73), vol. 7; this Parma text of the *Commentary on the Sentences* is used in the Supplement to the *Index Thomisticus* (ITS), 7 vols (Stuttgart 1980). The ITS is now available online at <http://www.corpusthomisticum.org/it/>.

²³ See Lucy Freeman Sandler, *Omne Bonum: A Fourteenth-Century Encyclopedia of Universal Knowledge*, 2 vols (London, 1996).

ted sins, which is not total, whereas contrition refers to total displeasure. These matters are noted by the Archdeacon in his *Rosary*, on *De penitentia*, D. 3, chapter 8, *Perfecta penitentia*, at the word “contritio.”²⁴

Although such fine distinctions show 14th-century interest in how the sinner effects penance, the sacramental mechanism of confession remained largely unexplored. Needless to say, just as we should not be explicating Chaucer in terms of Tridentine theology, we should not be using the post-Chaucerian language of *ex opere operato* and *ex opere operantis* to describe sacramental theology in his time.²⁵ But if we do use these terms, we should not misconstrue the *operans* of a sacrament: he is the minister, not the recipient. So, if this terminology were to be applied to the sacrament of confession, the *operans* would be the confessor, not the confessant.²⁶ That is, an unrepentant sinful priest can validly give

²⁴ “*Attritio*. Dicit Thomas de Aquino quod attritio ducit assensum ad perfectam contritionem. Unde in corporalibus [*sic*] dicunt attrita que aliquo modo sunt comminuta, sed non perfecte. Sed contritio dicitur quando omnes partes simul trite sunt per divisiones ad minima. Et ideo attritio in spiritualibus significat quandam displicenciam de peccatis commissis, non perfectam. Contritio autem perfectam displicenciam significat. Ista notantur *De penitentia* Dist. iii, c. [8], *Perfecta penitentia*, super verbo *contritio*, per Archidiaconum in *Rosario*”; James Palmer, *Omne bonum*, London, British Library, MSS Royal 6 E 6–7, 1:154v.

In fact, the Archdeacon cites Aquinas as saying not that attrition “induces assent” [*ducit assensum*] but, rather, that it “declares an access” [*dicat accessum*] to perfect contrition; see Guido de Baysio (Archidiaconus), *Rosarium* (Strassburg c.1473, Hain 2713); in Gratian, see *De pen.* D. 3 c. 8 (*CIC* 1:1212). This notion follows Aquinas’s text: *In 4 Sent.* D. 17, Q. 2, art. 1, sol. 2, ad 3: “Attritio non dicit accessum ad perfectam contritionem. Unde in corporalibus dicuntur attrita que aliquo modo sunt comminuta, sed non perfecte,” etc. (*ITS* 1:611).

²⁵ The terms *opus operatum* and *opus operans* were used only sparingly through the 14th century, and only with respect to the minister, not the recipient, of the sacrament. For Innocent III, *opus operans* means “what works the work,” with *opus* being the object of *operans*; see *De sacro altaris mysterio* 3.5: “Non ergo sacerdotis iniquitas effectum impedit sacramenti, sicut nec infirmitas medici virtutem medicine corrumpit. Quamvis igitur opus operans aliquando sit immundum, semper tamen opus operatum est mundum” (PL 217:844). Neither Bonaventure nor Aquinas used this terminology, but Bonaventure, *In 4 Sent.* 1.1.1.5, reports that some commentators designate faith as the *opus operans*, and Aquinas, *In 4 Sent.* 1.1.5.3, says that others take *opus operans* to mean the *operatio* or *usus* of the sacrament (in which case *opus* would seem to be the subject of *operans*, “the work working”). See A. Michel, “Opus operatum, opus operantis,” *Dictionnaire de théologie catholique* (Paris, 1903–72), 11:1084–87. I have not seen an early use of *opus operantis*, “work of the worker.”

²⁶ This is a mistake made by Lee Patterson, “Chaucer’s Pardoner on the Couch: Psyche and Clio in Medieval Literary Studies,” *Speculum* 76 (2001), 638–80: he uses *ex opere operantis* to refer to the deed of the recipient of the sacrament of penance (p. 670) rather than to the condition of the priest who hears the confession. By the way, I applaud Patterson’s stirring recantation of Freudian interpretations in this article. Patterson treats attrition in his book, *Chaucer and the Subject of History* (Madison, 1991),

absolution to a repentant penitent, but any absolution given to an unrepentant penitent will not “take.”

Burgh: Exceptional Instances of Sin

Up-to-date casuistry is nevertheless evident in Burgh’s discussion of reserved sins (those cases which cannot be absolved by any confessor but are reserved to religious superiors), especially the sin of striking a cleric, which results in excommunication (chs. 17–18). Chapter 17 deals with cases in which those who are excommunicated for striking a cleric should not be absolved “this side of the Holy See,” that is, when grievous injury is done. But the local bishop can decide what is grievous (§§A,C). If the injury is done by a judge or summoner in the course of his office, not deliberately, it is not imputed to him. The same is true for those who fight against clerics who have taken up arms, and laymen who arrest clerics (§H). He ends the chapter by saying that those who hit clerics without great injury can by general law [*jus commune*, citing the *Liber Extra* and *Sext*]²⁷ be absolved by their own bishops. But then he seems to say, invoking Bernard of Parma’s Ordinary Gloss on the decretal *Nuper*, that even the aforesaid cases of serious injury should be absolved by the local bishop, or, if he is unavailable, by the perpetrator’s own priest (§R).²⁸ We should note, however, that according to the *Casus*

ch. 8, “The Subject of Confession: The Pardoner and the Rhetoric of Penance,” pp. 367–421, esp. 376, where he adduces the views of John Duns Scotus on attrition by way of a dissertation by Gordon J. Spykman, *Attrition and Contrition at the Council of Trent* (Free University, Amsterdam, 1955; published by Kampen, 1955), pp. 70–84, but his discussion is in terms mainly irrelevant to Chaucer’s time (specifically “contritionism” and “attritionism”). For a summary of Scotus’s views on contrition and attrition, see Richard Cross, *Duns Scotus* (New York, 1999), pp. 106–07. I do not see Burgh or other medieval English authorities citing Scotus on these subjects. Patterson concludes (p. 420) that the Pardoner reveals “the emptiness of the penitential procedures of which he is an agent.” But the Pardoner, not being a priest, was not involved in the forgiveness of sins (except perhaps as a charlatan).

²⁷ *X* 5.39.17, *Pervenit*; *Sext* 5.11.21, *Religioso* (*CIC* 2:895, 1105). On the medieval meaning of *jus commune* [standard law on a certain point] as opposed to the 20th-century meaning (equivalent to *jus utrumque*, the combination of the bodies of canon and civil law), see H. A. Kelly, “Medieval *Jus commune* versus/versus Modern *Ius commune*; or, Old ‘Juice’ and New ‘Use’,” *Proceedings of the Twelfth International Congress of Medieval Canon Law* (Washington, DC, August 1–7, 2004), ed. Kenneth Pennington and Uta-Renate Blumenthal (Vatican City, forthcoming).

²⁸ Gloss on *X* 5.39.29, *Nuper*, v. *sacerdote* (*C7C* 2:1899): “Sic ergo simplex sacerdos potest absolvere.”

on *Nuper*, this is true only when one is legitimately prevented from going to the pope, a point that is clear enough in *Nuper* itself.²⁹

In section K of chapter 17, Burgh takes up the question of women who strike clerics. Do they have to go to Rome to be absolved by the pope? A decretal of Alexander III would seem to indicate not, because of the difficulty that women would have in making such a journey.³⁰ But William of Rennes (fl. 1240–45), commenting on Raymond's *Summa*, is cited as saying that she should be sent to the Holy See if the injury she inflicted was atrocious and if she is sufficiently strong and her going would not be prejudicial to anyone. Women who burn churches or forge papal letters are to be sent to the pope, since the law does not spare them, possibly because, William thinks, such crimes are premeditated, whereas fisticuffs often occur from a sudden impulse (17 §K). Of course, if it is a nun who incurs excommunication for striking a cleric or a religious, she can be absolved by the local bishop (§Q).

Burgh also believes that no excommunication is incurred for striking a cleric who is not recognizable as such because he wears his hair long (18 §A) or if he is wearing neither habit nor tonsure nor manifesting anything clerical about himself; and likewise if he bears military arms and does not desist after being warned three times (§B). The decretal cited here, *In audientia*, compares such clerics to a matron who dresses like a prostitute and therefore has no action at law.³¹ The same is true of clerics who persist in carrying on secular business (§C), and of a cleric who becomes a jongleur or goliard for a year—or for a shorter time, if repeatedly admonished (§D). The last censure is based on the decretal *Clerici qui clericalis* in the *Sext*, where the prohibited roles named are *joculatores*, *goliardi*, and *bufones*.³² Likewise, no excommunication is incurred when light blows are delivered in jest, or when a master disciplines a scholar (§E), or when one acts in self-defense or in defense of one's wife or other family member (§F).

The same juridical acuity and imagination inform Burgh's analysis of cases involving clerical misconduct with a member of one's family. When one finds a cleric dealing foully with one's wife, mother, sister, or daughter, or preparing for the carnal deed in a private and suspect place by kisses and embraces, or if through other open signs it is clear

²⁹ *Casus* on X 5.39.29, *Nuper* (C7C 2:1897–98).

³⁰ Alexander III, *Mulieres*, X 5.39.6 (CIC 2:891).

³¹ X 5.39.25, *In audientia* (CIC 2:987–98).

³² *Sext* 3.1.1, *Clerici qui clericalis* (CIC 2:1019).

that the work of turpitude has been accomplished, no excommunication is incurred for beating him. In fact, the same would be true if one mutilated or even killed the cleric, since the relevant papal decretal, *Si vero alicujus*, does not distinguish between atrocious and non-atrocious injury. The Gloss to this decretal notes that Justinian's *Digest* permits the culprit to be killed,³³ but Burgh is getting his interpretation from William of Rennes's commentary on Peñafort. Burgh then reports the view of Hostiensis, that it is not allowed to strike the cleric if something else can be done.³⁴ He concludes with William that it is safer to say that anyone who thus kills or mutilates a cleric "falls under the canon" (that is, is excommunicated).³⁵ This is definitely the case if the cleric is beaten only after he has departed from the place where he did the deed. If the husband catches him with his wife, he can hold him without being excommunicated until he summons witnesses.³⁶ A husband who arranges to have a cleric commit the foul deed with his wife, and then beats him when he appears, incurs excommunication, as does his wife. What about a woman who strikes a priest or cleric who wants sex with her? According to William, if he has touched her or used force, and if she strikes him only moderately, she probably does not fall under the canon, though it would be safer for her to seek absolution. If the attempted seduction was only verbal, however, she is unquestionably excommunicated (18 §G).

Burgh: Punishment and Absolution

One subject that Burgh fails to take up is the remission of punishment due to sin through indulgences. He does, however, deal with the confessor's role in reducing punishment: when a priest absolves any sin, he not only declares the penitent to be free of the sin but also dismisses some of the punishment due for the sin. Every mortal sin has a double punishment, temporal and eternal (referring to Gregory the Great's

³³ Gloss to *X* 5.39.3, *Si vero alicujus*, v. *turpiter* (*CJC* 2:1878).

³⁴ Citing the decretal *Presbyteri interfecti* (*X* 5.37.2), which, however, is not relevant (it deals with the question of who receives the fine assessed for killing a priest).

³⁵ The canon is *Si quis suadente* of Innocent II (A.D. 1139), Gratian, *Decretum* C. 17, q. 4, c. 29 (*CIC* 1:822).

³⁶ Here Burgh gives a faulty reference to the Ordinary Gloss to *Si vero clericus*. The relevant decretal is *Si vero alicujus*, *X* 5.39.3, but the Gloss says nothing of the sort (*CJC* 2:1877–78).

canon *Si peccatum*, about the sin of David).³⁷ God remits the eternal punishment when the penitent has true contrition, and the priest by the power of the keys can remit some of the temporal punishment, not only that which is dismissed by carrying out what the confessor enjoins for satisfaction but also that which is to be fulfilled in purgatory; and he can remit more or less of the punishment according as the penitent is more or less disposed to this through true contrition [*secundum quod plus vel minus fuerit penitens per veram contritionem ad hoc dispositus*] (14 §ag).³⁸

When temporal punishment is forgiven through prayer or penance or indulgences, the usual word for it is *remission* rather than *absolution*, but the latter term does occur, especially when praying for the dead. Here, for instance, is a prayer in the Office of the Dead of the Sarum Breviary: "Absolve, quesumus, Domine, animas famulorum tuorum... ab omni vinculo delictorum; ut in resurrectionis gloria inter sanctos et electos tuos resuscitate respirent."³⁹ [Absolve, O Lord, we beseech you, the souls of your servants... from every bond of sin, so that in the glory of the resurrection they may be revived and live among your holy and chosen ones].

This liturgical usage seems to be the sense in which Chaucer's Pardoner uses the term *assoile*, the Middle English form (from French) of *absolve*, for the Pardoner restricts his ministrations to those who have been shriven, that is, who have received absolution for their sins in confession:

If any wight be in this chirche now
 That hath doon synne horrible that he
 Dar nat, for shame, of it yshriven be,

 Swich folk shal have no power ne no grace
 To offren to my relikes in this place.
 And whoso findeth him out of swich blame,
 He wol come up and offre a Goddes name,

³⁷ As cited in Gratian, *Decretum*, *De pen.* D. 1 c. 82, *Si peccatum* (CIC 1:1182).

³⁸ Note that Burgh here seems to admit to varying degrees of true contrition. He is drawing at this point on Richard Middleton. See Ricardus de Mediavilla, *Super quatuor libros Sententiarum Petri Lombardi quaestiones subtilissimae*, 4 vols (Brescia, 1591), 4.18.2.2 (4:274): "Sacerdos potestate clavium potest penitenti remittere aliquam partem pene temporalis peccato debite, non tantum illius quem sibi injunxit, sed etiam illius que in purgatorio est explenda; et plus vel minus potest de ista pena remittere secundum quod plus vel minus penitens est bene dispositus."

³⁹ *Breviarium ad usum insignis ecclesiae Sarum*, ed. Francis Procter and Christopher Wordsworth, 3 vols (Cambridge, 1879–86; repr. Westmead, 1970), 1:xlili.

And I assoile him by the auctoritee
Which that by bulle ygraunted was to me.⁴⁰

(*Pardoner's Prologue*, lines 378–80, 383–88)

There is, of course, a real possibility that Chaucer thought of his Pardoner as claiming more powers in the way of absolution than he actually had, since in fact even his “questorial” powers were nonexistent—at least those claimed for his phony relics and spurious bulls.

Another of Chaucer's pilgrims, Friar Hubert, lays claim to special powers of absolution in administering the sacrament of penance. He says that these powers exceed those of a simple curate (parish priest, rector of the church):

For he hadde power of confessioun,
As seyde hymself, moore than a curat,
For of his ordre he was licenciat,

(*General Prologue* 218–20)

But this claim can be considered groundless if, as seems to be the case, he is asserting that his authority to absolve reserved sins comes from his religious order. Burgh explains that such authority could only validly come from the local bishop. If a confessor licenced by the bishop were to absolve penitents from excommunications or sins beyond the powers given to him, the confessor himself would be automatically excommunicated (14 §al).⁴¹

I should note that the expression *absolutio a pena et a culpa* was a code phrase for the plenary indulgence that only the pope could grant. Such indulgences had been granted generally only to crusaders and to pilgrims to Rome during the Holy Years of 1300 and 1350. Clement V denounced claims by pardoners to such a power⁴² and decreed that

⁴⁰ If there be any person here in church who has committed a horrible sin, such that he does not dare, for shame, to be shriven of it, no such person will have the ability or grace to give an offering before my relics here. But anyone who finds himself free of such guilt, who comes up and offers in God's name, I will absolve, by the authority given to me by the bull.

⁴¹ See the discussion in Malcolm Andrews, *A Variorum Edition of the Works of Geoffrey Chaucer*, Part 1A–B: *The General Prologue*, 2 vols. (Norman, Okla., 1993), 2:227–29. Arnold Williams, “The ‘Limitour’ of Chaucer's Time and His ‘Limitacioun’,” *Studies in Philology* 57 (1960), 463–78, attempts to justify the friar's claim by interpreting “ordre” as simply referring to his “status,” meaning that he was licenced as a penitentiary by the bishop.

⁴² *Clem.* 5.9.2, *Abusionibus* (CIC 2:1190): “et aliqui ex ipsis eos a pena et a culpa (ut eorum verbis utamur) absolvant.” See the Ordinary Gloss of John Andrew on this

any religious who actually absolved anyone with this formula would be excommunicated on the spot.⁴³

William Lyndwood on Confession

Now let us turn to William Lyndwood and see some of the specifics that he gives concerning confession and penance. His findings can be compared with those of John Acton, writing in the 1340s, in his extensive glosses on the English legatine constitutions of the 13th century.⁴⁴ In these laws and commentaries we find English practices concerning such things as the jurisdiction of friars and monks, confessors for nuns, reserved sins, distinctions between the internal and external forum, private and public penances, and so on, which throw light on (for instance) Chaucer's Friar Hubert, the Summoner's presentation of Friar John and the local curate, the Wife of Bath's frequent revelations (or lack of revelations) to her parish priest, the confessor-like attitude of the monk Daun John in the *Shipman's Tale*, and, in real life, the astoundingly frequent confessions of Margery Kempe (c.1373–c.1438) and the exceptional monastic parish church that she mentions (St Margaret's in Lynn).⁴⁵

Most of the authorities cited by Lyndwood predate Chaucer, and the same is true of the constitutions he comments on, except those of Oxford of 1407/09.⁴⁶ However, the three constitutions that Lyndwood takes to be the latest provincial legislation on confession, attributing them

passage, *CJC* 3:2:305, and see the extravagants of Boniface VIII and Clement VI authorizing the indulgences for 1300 and 1350, *Extrav. communes* 5.9.1–2 (*CIC* 2:1303–06).

⁴³ *Clem.* 5.7.1, *Religiosi* (*CIC* 2:1186): "Religiosi qui... (ut verbis eorum utamur) a pena et a culpa absolvere quemquam presumpserint, excommunicationis incurrant sententiam ipso facto."

⁴⁴ As mentioned in n. 3 above, Acton's glosses were published as an appendix to the 1679 edition of Lyndwood's *Provinciale* (repr. 1968). Lyndwood arranges the English constitutions that he wishes to gloss in his *Provinciale* according to the titles of the five books of the *Liber Extra* (= *X = Decretales Gregorii IX*), which was compiled by Raymond of Peñafort and published in 1234.

⁴⁵ I deal with some of these points in "Sacraments, Sacramentals, and Lay Piety in Chaucer's England," *Chaucer Review* 28 (1993–4), 5–23. On private and public confession in the two forums, see my "Saint Joan and Confession: Internal and External Forum," in *Joan of Arc and Spirituality*, ed. Ann W. Astell and Bonnie Wheeler (New York, 2003), pp. 60–84.

⁴⁶ Lyndwood, *Provinciale*, 5.16.14–16, pp. 342–45; also given in *AppProv* p. 59.

to Archbishop Sudbury (1375–81), are actually statutes of the diocese of Salisbury issued by Bishop Richard Poore shortly after the Fourth Lateran Council (he was bishop from 1217 to 1221), and it is doubtful that they were reissued by Archbishop Sudbury.⁴⁷ But Lyndwood's extensive commentary is certainly up-to-the-minute.

Lyndwood: How and What to Confess

The first of the Pseudo-Sudbury constitutions, *Confessiones mulierum*, dictates that women are to be confessed "outside the veil," in open view, though out of anyone's hearing. Lyndwood explains "the veil" as referring to the cloth that was hung in the choir between the altar and the view of the people during Lent; or, he says, it could refer to any veiled or covered place.⁴⁸ The constitution then says that the laity are to confess as soon as Lent begins as well as always immediately after sinning. In the first clause, Lyndwood sees a possible contradiction, since the Lateran rule says once a year. This rule, however, Lyndwood says, can be read as referring to someone not in mortal sin, who is advised to confess at least once a year so as not to become too self-assured: "Quia non debet se nimis assecurare," with a reference to canon *Ad ejus* of Gregory the Great, presumably pointing to the passage, "Bonarum quippe mentium est etiam ibi culpas suas agnoscere ubi culpa non est" [It is a trait of good minds to acknowledge faults even when there is no fault].⁴⁹ Then he gives other possibilities, drawing on John of Freiburg's authorities (n. l).

Finally, the constitution forbids confessors from requiring the penitent to arrange for Masses to be said as part of his or her penance, though such can be suggested by way of counsel. Lyndwood explains that the reason for this prohibition is that the penitent could easily suspect the priest of seeking money for himself to say the Masses (p. 343 n. b).

The second constitution, *In confessionibus et predicationibus*, orders priests to emphasize frequently that every sexual union of man and woman outside marriage is a mortal sin. The third, *Confessiones ter in*

⁴⁷ See Cheney, "William Lyndwood's *Provinciale*," p. 172.

⁴⁸ Lyndwood, *Provinciale*, 5.16.14, p. 342 n. c.

⁴⁹ As cited in Gratian, *Decretum* D. 5, c. 4, *Ad ejus vero concubitum*, §2 (CIC 1:9). Gregory's point is that sometimes we do things without fault that are caused by a fault: for example, there is no fault in eating when we are hungry, but hunger is caused by the fault of the first man.

anno, urges confession and communion three times a year, namely, at Easter, Pentecost, and Christmas, and gives the penalty for not confessing once a year to one's own priest and for not receiving communion at Easter: namely, prohibition from entering the church and refusal of Christian burial.⁵⁰

Lyndwood's longest comment concerns the stipulation "one's own priest" in this third constitution of Poore-Sudbury; this is one of the elements of the Fourth Lateran Council's prescription for annual confession. Lyndwood considers whether, for instance, the obligation could be satisfied by going to a friar. He reports John Acton and William of Montlaurzun (d. 1343) as seeming to say yes, but notes that other authorities do not classify friars as valid confessors for parishioners. He adduces his contemporary, Peter of Ancharano (d. 1416), who observes that parish priests can permit their parishioners to make their required annual confession to a friar, but otherwise the parishioners do not need permission to go to confession to friars (p. 344 n. b).

These constitutions are the last three of the 16 that Lyndwood gathers under the title of *De penitentiis et remissionibus*. I give a fuller account of the contents of these chapters in the Appendix below (pp. 306–317), preceded by summaries of the chapters under the title *De penitentiis et remissionibus* in the *Liber Extra* and in Peñafort and John of Freiburg. For the present purposes, Lyndwood's presentation of a confessor's purview and power, his practices in assigning penance, the conditions of the seal of secrecy, indulgences, and absolution are especially noteworthy. I address these in the order and under the headings in which the constitutions detail them.

- *Cum sacramentum*, 1261 (cap. 2): No one is to be denied confession. Lyndwood says that oral sacramental confession is required by divine law, but mental confession suffices in an emergency (p. 328 n. a).
- *In confessione*, "1234–40" (really c.1220) (cap. 3): Lyndwood says that it is acceptable to inquire about accomplices with the intention of secretly helping them (p. 329 n. g). He cites William Durandus's protest against the multiplication of reserved cases as an undue restriction on the confessor's power, which is in fact plenary (p. 329 n. m). According to the *Liber Extra* (4.21.1), a priest who blesses second nuptials has to be absolved by the pope, but John XXII issued

⁵⁰ Lyndwood, *Provinciale*, 5.16.15–16, pp. 343–45.

a constitution leaving it to the local bishop (pp. 329–30 n. t). Lyndwood questions the validity of the requirement that a penitent have his curate's authorization to come to the bishop for confession; for, Lyndwood says, the bishop is the "proper priest" of every member of the diocese, and all can come to him freely (p. 330 n. p).

- *Sacerdos*, "1313–27" (really c. 1225) (cap. 7): The confessor is to enjoin appropriate penances, and hear confession in the open, where he and the penitent can be seen; he is not to hear another curate's parishioner; a penance given to a wife should not be such as to reveal her sin to her husband; restitution must be made before absolution is given; the confessor should consult with the bishop in difficult cases; the confessor should not seek to know the sins of anyone else but the penitent. Lyndwood notes that by law a mortal sin should be given a seven-year penance, but the confessor can reduce it (p. 331 n. l). When a confessor is not able to absolve a penitent, he should at least advise some good works to prevent him or her from falling into despair. For, even though works done in the state of mortal sin (that is, when one is "not in charity") are not meritorious, they still produce some benefits: they will reduce the pains of hell (if one is unlucky enough never to be absolved or forgiven!); they can gain earthly prosperity; they can prepare the way for penitence; they can foster the habit of doing good; they reduce the power of the Devil over the sinner (p. 333 n. r).
- *Prohibemus*, "1313–27" (c. 1225) (cap. 8):⁵¹ Priests are never to reveal sins learned in confession. Lyndwood notes that the strict obligation to silence refers only to sins confessed with the intention of having them absolved. Other things learned in confession can be revealed, if required by a judge (or, as we would say, "under a court order"), even if the confessor has taken an oath not to reveal it. But if such information is illegally sought, the priest should either remain silent or change the subject, or respond misleadingly (he gives examples and authorities). If the priest knows a person's sin outside of confession,

⁵¹ The whole text of *Prohibemus* is cited at the end of another chapter, *Linteamina* (*Provinciale*, 3.23.8). In his commentary on *Linteamina*, Lyndwood discusses why sacramental confession is necessary after sins are forgiven through contrition. He says that it is because of the Church's precept, and he cites as his authority Aquinas, *De veritate*, book 6, c. 24 (p. 236 n. r). This, however, seems to be a spurious work; it is certainly not Aquinas's *De veritate*. John Burgh, in *Pupilla oculi*, book 10 c. 4 (§O), cites the same (or another) spurious treatise on truth ascribed to Aquinas: "secundum Thomam, iii *De veritate*," on the circumstances that make marital sex sinful.

he can, however, testify about it. He can also reveal a sin learned in confession if the penitent gives permission. If a person in confession tells the priest that he or she is tempted to commit a crime and cannot resist, can the priest reveal it? There are a variety of opinions, theologians saying no and canonists a qualified yes; Lyndwood thinks that the theologians have the truer opinion (p. 334 nn. n–q).⁵²

- *Cum salubriter*, 1279–90 (maybe) (cap. 10): Commenting on 40-day indulgences issued by local bishops, Lyndwood says that the preaching office does not belong to pardoners; they are only to explain their indulgences and to solicit charitable donations (p. 336 n. y). Donations given for such indulgences are usually for the donor's own benefit, but the benefits can be applied to souls in purgatory if that is the donor's intention (p. 337 n. a). If an indulgence is false, does it still benefit an unwitting donor? There are more reasons for saying no than yes. Donations can be demanded back, if the deceiver still has them, but the situation is more dubious if the money has already been delivered to pious projects. Lyndwood cites Roman civil law on the matter (p. 337 n. b).
- *Sacramentum penitentie*, 1281 (cap. 11): If a confessor without power to do so absolves an excommunicated person, the sacrament is invalid. Lyndwood asks, since sins are deleted by God through contrition, what effect does the confessor's absolution have? He gives various answers, including Innocent IV's that God does not absolve a sinner unless he is absolved by a priest, citing the words of Jesus to Peter, "Whatever you bind on earth," etc. (Matt 16.19). Lyndwood reports that Thomas Aquinas says that when a penitent is not perfectly disposed to gain grace during his actual confession to the priest, he may receive the grace from the sacramental absolution, if he does not place an obstacle in the way.⁵³ "Peter" says the same thing, adding that if one is sufficiently contrite, one receives therein an increase of grace (p. 337 n. g). The last-cited authority is Peter of Tarentaise, the Dominican who succeeded Aquinas at Paris and later was elected pope (as Innocent V) shortly before he died in 1276. I will take up his views below (p. 260).

⁵² Many of these points, but not the last, are treated also by John Burgh in his book 5 (6 §§ao–au).

⁵³ Lyndwood is citing Aquinas, *In 4 Sent.* D. 18, Q.1, art. 3, sol. 1 (ed. Parma, 7:813; *ITS* 1:543); but there is a crucial difference in the received text of Aquinas, as I will note below, pp. 259–260.

- *Preterea*, 1281 (cap. 12): Solemn public penance for public crimes, now neglected, should be reinstated. Lyndwood notes that such penances can be imposed only by the bishop, since they are for grave sins, which are reserved to the bishop (p. 340 n. f). There are safeguards against revealing the nature of the sin that the penitent is doing penance for (n. g).

There is, of course, a lot of overlap between the treatments that Burgh and Lyndwood give to each topic. Some of the matters discussed by Burgh are to be found in Lyndwood in places other than the above-treated title *De penitentiis*. For instance, the question of vows and dispensations from vows falls under the title *De voto et voti redemptione* (Book 3 title 18), corresponding to *Liber Extra* 3.34. But Lyndwood includes only two chapters here (pp. 203–04), and his treatment is much less extensive than Burgh's.

The titles noted above do not begin to exhaust the wealth of material relating to penance in Lyndwood's treatise. He deals extensively with excommunication in his last title, *De sententia excommunicationis*, 5.17 (pp. 345–56), and other aspects of penance are treated in 5.15, *De penis* (pp. 314–26). The same is true of other titles of book 5: those on trials (title 1, pp. 277–78), simony (title 2, pp. 278–81), heretics (title 5, pp. 288–305), apostates (title 6, pp. 305–06), parents who smother their children (title 7, p. 307), homicide (title 8, pp. 307–08), theft (title 9, p. 308), furtive ordination (title 10, pp. 309–10), excesses of prelates (title 12, pp. 310–11), and canonical purgation (title 14, pp. 312–14). And in fact, sins and penance are treated through the entire book, since it is all about laws and what happens when the laws are broken.

Views of the Sacrament of Penance: Necessity and Advantage

Using Lyndwood's treatise as a starting point, let us look at the weight of some of his ideas, which seem to be shaped by the perspectives of theologians more often than the views of jurists. Then we will consider subsequent treatments of some of the questions he pondered.

First let us consider the question of whether the sacrament of penance is necessary, and why. Lyndwood says that it is indeed necessary, but he gives no other reason than that it is mandatory, that is, the Church commands it, even when a sin has been removed through contrition. In other words, it would be a sin not to use it—at least once a year.

His only cited authority is a *De veritate* that he attributes to St Thomas Aquinas (p. 236 n. r).⁵⁴

We can see Aquinas's authentic view on the necessity of the sacrament in his *Summa theologiae*, where he says without qualification that it is necessary that sin be removed from the sinner, and that this can be done only through the sacrament of penance. In this sacrament the power of the Passion of Christ operates through the priest's absolution along with the work of the penitent, who co-operates with grace for the destruction of sin.⁵⁵

On to the next question: What are the additional advantages of the sacrament? We saw that Lyndwood elsewhere cited Aquinas and Peter of Tarentaise on the positive benefits of the sacrament of penance. He quotes Aquinas there as saying that a penitent who before absolution is not well enough disposed to receive grace in the confession itself will receive the grace from the sacramental absolution, as long as he places no obstacle to it:

Si ante absolutionem sacerdotalem aliquis non fuisset perfecte dispositus ad gratiam suscipiendam in ipsa confessione, **ex** absolutione sacramentali gratiam consequeretur, si obicem non poneret. (p. 337 n. g)

[If, before priestly absolution, one were not perfectly disposed to receive grace in the confession itself, one would acquire grace **from** the sacramental absolution, if one put no obstacle to it.]

This cited passage in Lyndwood has a different reading from that of the received text of Aquinas, which has *et* instead of *ex*, and requires a different punctuation and takes on a different meaning:

Si ante absolutionem sacerdotalem aliquis non fuisset perfecte dispositus ad gratiam suscipiendam, in ipsa confessione **et** absolutione sacramentali gratiam consequeretur, si obicem non poneret.⁵⁶

⁵⁴ See n. 51 above.

⁵⁵ Aquinas, *Summa theologiae* 3.84.5: "Et ideo necessarium est ad salutem peccatoris quod peccatum removeatur ab eo, quod quidem non potest fieri sine penitentie sacramento, in quo operatur virtus passionis Christi per absolutionem sacerdotis simul cum opere penitentis, qui cooperatur gratie ad destructionem peccati."

⁵⁶ Aquinas, *In 4 Sent.* 18.1.3 sol. 1 (see n. 53 above). The wording of the received text of Aquinas is also found in a parallel passage in Aquinas's commentary. Aquinas, *In 4 Sent.* 22.2.1 sol. 3 (Parma, 7:869): "Quando aliquis accedit ad confessionem attritus, non plene contritus, si obicem non ponat, in ipsa confessione et absolutione sibi gratia et remissio peccatorum datur" [When one comes to confession attrite, not fully

[If, before priestly absolution, one were not perfectly disposed to receive grace, one would receive grace in the confession itself **and** the sacramental absolution, if one put no obstacle to it.]

Thus worded, the text means that such a person will receive the grace *in the confession itself and* in the sacramental absolution. On the face of it, Lyndwood's version of the text would seem to make more sense: the penitent is not properly disposed before absolution, and only receives grace from the absolution.

Lyndwood says that Peter of Tarentaise says the same thing about an imperfectly disposed penitent, but does he? Let us examine the text of Peter's commentary on Lombard's *Sentences*. Peter has previously brought up and rejected four interpretations, and now this is the fifth, with which he agrees:

Dicunt quod attrito ad confessionem accedenti, virtute absolutionis sacerdotalis quasi instrumentaliter ad ipsam disponentis, datur gratia justificans, contrito vero datur augmentum gratie.⁵⁷

That is, "They say that the attrite person who comes to confession is given justifying grace by virtue of the priestly absolution, which instrumentally disposes him towards it, while a penitent who is contrite receives an increase of grace." This seems to be like saying that the attrite person becomes contrite through the power of the sacrament, whereas a penitent who is already contrite when he comes to confession has already received justifying grace, and the sacrament does nothing more than increase it.

It turns out, then, that Lyndwood knew about attrition, since he obviously read these passages of Aquinas and Peter that he refers to, but, unlike Burgh, he did not talk about it.

It is clear that the medieval uncertainties and differences of opinion about the benefits and workings of the sacrament of penance persisted into later times. In the 16th century, the authors of the *Catechism Commissioned by the Council of Trent* also veer away from discussing attrition, although they are certainly familiar with the subject.⁵⁸ They ignore what

contrite, if one does not place an obstacle, grace and the remission of sins are given in the very confession and absolution].

⁵⁷ Innocent V (Peter of Tarentaise), *In 4 Sent.* 18.2.1, *In quattuor libros Sententiarum commentaria*, 4 vols (Toulouse 1649–52), 4:209.

⁵⁸ *Catechismus ex decreto concilii Tridentini ad parochos Pii V Pont. Max. jussu editus* (Rome, 1567). See the critical edition: *Catechismus Romanus, seu, Catechismus ex decreto*, etc., ed. Pedro Rodríguez and Ildefonso Adeva (Vatican City, 1989). A modern English transla-

the Council of Trent said on the matter, and instead they introduce the idea of a need for “intense” contrition, which, they say, is very difficult to achieve. Their statements, dressed in the Latin polish applied by the humanist Giulio Poggiani,⁵⁹ are hard to parse, but this is what Msgr Donovan makes of the passage:

[Q. 36] Granting that sins are cancelled by contrition, who is ignorant that, [to effect this], it must be so vehement, so intense, so ardent, as that the bitterness of our sorrow may be compared with, and bear a proportion to, the magnitude of our crimes. But as this is a degree of contrition which very few could reach, the consequence also was that very few could have hoped to obtain in this way the pardon of their sins. [Q. 37] It was therefore necessary that the Lord, in His infinite mercy, should provide by some easier means for the common salvation of men; and this He did, in His admirable wisdom, when He gave to the Church the keys of the kingdom of heaven. For, according to the doctrine of the Catholic faith, it is to be believed and firmly professed by all that if anyone is sincerely sorry for his past sins, and firmly resolves to avoid sin for the future, although his sorrow be not such as may be sufficient of itself to obtain pardon [*etsi ejusmodi dolore non afficiatur qui ad impetrandam veniam satis esse possit*], yet all his crimes, if duly confessed to the priest, are remitted and pardoned by the power of the keys; so that justly was it proclaimed by those most holy men, our Fathers, that by the keys of the Church is thrown open the gate of heaven. Of this no one is at liberty to doubt, the Council of Florence having defined that the effect of penance is absolution from sins.⁶⁰

This concluding invocation of the Council of Florence of 1439 is potentially misleading. All that is actually being cited is the last sentence from the Council’s brief treatment of the sacrament of penance in the decree on the Armenians: “The effect of this sacrament is absolution from sins” [*Effectus hujus sacramenti est absolutio a peccatis*]. However, the *Catechism* seems to imply that Florence also set forth the idea of the difficulty of achieving adequate contrition outside of the sacrament. But in fact the Florence decree says only that contrition of heart is the

tion was produced by Robert I. Bradley and Eugene Kevane, *Roman Catechism* (Boston, 1985). Bradley translated the section on the sacraments.

⁵⁹ See E. Mangelot, “Catéchisme,” *Dictionnaire de théologie catholique* 2:1895–1968, esp. 1920.

⁶⁰ Very Rev. J. Donovan, tr., *Catechism of the Council of Trent* 2.5.36–37 (Pref. dated 1829; Dublin 1867), pp. 244–45, rendering pp. 311–12 of the 1567 *Catechismus*; see pp. 309–10 of the 1989 edition, and pp. 274–75 of the 1985 English translation.

first part of the sacrament; such contrition entails sorrow for past sin along with the intention of not sinning again.⁶¹

According to Trent's decree on penance, the sacrament confers forgiveness of sin even when the penitent can only muster up the imperfect contrition called attrition. It is imperfect, not because it is unformed or simply because it comes before grace (Aquinas, Burgh, etc.) but because it is caused by inferior motives (the filthiness of sin and the fear of Hell are specified); such attrition is not sufficient for justification without the sacrament of penance, but it disposes the sinner to obtain God's grace in the sacrament.⁶² The new understanding of attrition as confined to inferior motives has been traced to the early part of the 14th century—it is to be found in the *Sentences Commentary* of Durand de Saint-Pourçain (d. 1334)⁶³—therefore, before the time of Burgh and Lyndwood. But it did not become popular until later. Let us note that the Tridentine decree does not really say that attrition in conjunction with confession is sufficient for forgiveness, though this is a standard interpretation of the passage. Rather, the idea seems to be that attrition will help the penitent attain true contrition in the sacrament and thus receive forgiveness. However, the decree goes on to condemn as a

⁶¹ In Giovanni Domenico Mansi et alii, *Sacrorum conciliorum nova et amplissima collectio*, 53 vols (Paris, 1901–27), 31:1047–60, esp. 1057–58, we read: “Quarum prima est cordis contritio, ad quam pertinet ut doleat de peccato commisso cum proposito non peccandi de cetero.” There is also an edition of the decree in Heinrich Denzinger, *Enchiridion symbolorum*. I use the 32nd ed., ed. Adolf Schönmetzer (Barcelona, 1963), pp. 332–37, nos. 1310–28, esp. 1323.

⁶² *Canones et decreta Concilii Tridentini* (Naples, 1859), Session 14, ch. 4 (p. 77); *Enchiridion symbolorum*, no. 1678, p. 394: “Illam vero contritionem imperfectam quae attritio dicitur, quoniam vel ex turpitudinis peccati consideratione vel ex Gehennae et poenarum metu communiter concipitur... declarat... donum Dei esse et Spiritus Sancti impulsus, non adhuc quidem inhabitantis, sed tantum moventis... Et quamvis sine sacramento paenitentiae per se ad justificationem perducere peccatorem nequeat, tamen eum ad Dei gratiam in sacramento paenitentiae impetrandam disponit” [But it declares that imperfect contrition that is called attrition, which commonly comes from considering the filthiness of sin or through fear of hell and punishments,... to be a gift of God and inspired by the Holy Spirit (not yet inhabiting but only urging)... And though it is not able without the sacrament of penance to lead the sinner to justification, still it disposes him to obtain the grace of God in the sacrament of penance]. Spykman (n. 26 above) deals at length with the discussions leading up to this statement. The use of the term *disposes* represented a compromise between moderates and liberals; the former insisted upon an incipient love of God, while the latter were silent on the point (pp. 220–21). For a briefer account of these matters, see H. Dondaine, *L'attrition suffisante* (Paris, 1943).

⁶³ Pierre Adnès, “Pénitence,” *Dictionnaire de Spiritualité* 12,1 (1984), 943–1010, col. 972, citing Durand, *In 4 Sent.* D. 17, q. 2, 5 (Venice, 1571, fol. 339).

calumny the charge that Catholic writers say that persons can receive grace in the sacrament “absque bono motu” [without a good motive]. But could not *attritio* qualify as a *bonus motus*?—in conjunction with the Holy Spirit, of course.

Trent’s doctrine of the conversion of attrition to contrition seems to come closest (from among the medieval ideas that we have examined) to the concept of Peter of Tarantaise, who says that the priest’s absolution disposes the penitent to the reception of grace. Aquinas, for his part, says that when the attrite person comes to confession, grace and the remission of sins are given to him in the confession and absolution.⁶⁴ But what about those who achieve perfect contrition before they come to confession? Peter says that they already have sanctifying grace and simply receive more in the sacrament.⁶⁵ Trent, in contrast, says that, although it sometimes happens that contrition becomes perfect through charity and the penitent is reconciled to God before he actually receives the sacrament; nevertheless, the reconciliation is not to be ascribed to the contrition without a *votum* [desire] for the sacrament that is included in it.⁶⁶ That is, perfect contrition includes the intention of going to confession.

⁶⁴ Cf. Bonaventure, *In 4 Sent.* d. 17 part 2 art. 2 q. 3, resp.: “Dico quod ad sacramentum penitentie non est necesse quod accedat habens caritatem vel dispositionem ad caritatem sufficientem secundum veritatem, sed sufficit secundum probabilitatem; hec autem dispositio est attritio, que frequenter ob confessionem superadjunctam et absolutionem sacerdotis formatur per gratiam ut fiat contritio, sive ad ipsam contritio subsequatur; et multis ibi gratia conceditur” [I say that it is not necessary that he come to the sacrament of penance possessing charity, or a sufficient disposition towards charity, in reality, but it suffices that he have it in probability; now this probable disposition is attrition, which frequently develops by grace into contrition, because of the confession that follows and the absolution of the priest, or at least contrition follows upon attrition; and grace at that point is given to many persons].

⁶⁵ Cf. Aquinas, *In 4 Sent.* 17.3.5 sol. 1 (Parma, 7:803): “Similiter dicendum est de confessione, adjuncta absolutione, quod, secundum quod in voto penitentis precessit, a culpa liberavit; postmodum autem in actu confessionis et absolutionis gratia augetur; et etiam remissio peccatorum daretur si precedens dolor de peccatis non sufficiens ad contritionem fuisset, et ipse tunc obicem gratie non preberet” [The same thing is to be said about confession, joined with absolution: according as the penitent has desired it beforehand, it has freed him from guilt, and afterwards, in the actual confession and absolution, grace is increased; and even when the preceding sorrow is not great enough to constitute contrition, remission of sins will be granted if he places no obstacle to grace].

⁶⁶ *Canones Con. Trid.*, loc. cit. (*Ench. sym.*, no. 1677): “Docet praeterea, etsi contritionem hanc aliquando caritate perfectam esse contingat hominemque Deo reconciliare priusquam hoc sacramentum actu suscipiatur, ipsam nihilominus reconciliationem ipsi contritioni sine sacramenti voto, quod in illa includitur, non esse adscribendam.”

Vernacular Instruction on Penance: Chaucer

We have had occasion to refer to Chaucer several times during this survey, notably on the subjects of attrition, absolution from punishment due to sin, and the power of absolving reserved sins. Let us now finish with a brief account of his formal treatment of penance in *The Parson's Tale*.⁶⁷ As noted at the beginning, it follows the by now old-fashioned presentation of Raymond of Peñafort and the *really* old-fashioned treatment of Peraldus.

Discussion of the sacrament of penance is often confusing because *penitence*, like *penance*, may refer not only to the whole sacrament but also to the first and last of its three constituent parts, which are contrition of heart, confession of mouth, and satisfaction; and penance is also regularly regarded as a distinct virtue. In Chaucer's recorded usage, *penance* never refers to the sacrament itself, for which he sometimes uses the word *shrift*. Following Peñafort, Chaucer defines *penitence* merely as contrition (Parson'sT 84ff.). When Chaucer proceeds to the distinct "species" of penitence, the word means "penance" in the sense of prescribed punishments. Moreover, the first two species refer (by Chaucer's time) to penalties decreed for persons convicted in church courts for public crimes, and only the third species refers to the penance given secretly by one's confessor (Parson'sT 102–06).

As in Peñafort, there is no discussion of imperfect contrition or attrition in *The Parson's Tale*. After giving many motivations for contrition, including fear of punishment in hell, the Parson defines the second part of the sacrament, confession proper, that is, the oral recitation, as the true showing of sins to the priest. This showing must take into account all the "conditions" of the sins (Parson'sT 319). But, of course, one must know what sin is in itself, and, since sins have to be confessed by "species" as well as number, the Parson inserts here an example of a manual formulated to outline the various kinds of sin (Parson'sT 387–957). It is derived largely from Peraldus's treatise, and, like it, has nothing to do with confession.

The Parson then resumes his account of the ideal oral confession: the penitent must specify his or her status (married or single, cleric or secular, etc.) and the "circumstances" of the specific sins to be confessed

⁶⁷ The Parson's Tale will be cited from the edition of Benson (see n. 1 above) by sentence numbers.

(Parson'sT 960ff.). The first condition of the oral recitation is that it be done in sorrowful bitterness of heart, which is shown by five signs: shame, humility, tears, not letting shame stand in the way of an honest account, and the docile acceptance of the penance that the confessor gives (Parson'sT 983–97). Shrift without repentance, therefore, would invalidate the sacrament (Parson'sT 310). Chaucer's Friar Hubert, supposing that some of his penitents are too hard-hearted to produce tears, invents an additional sign of repentance: namely, generous alms given to the confessor (General Prologue 218–32).

All the unabsolved sins remembered at the time of confession must be told (Parson'sT 1010), at least all the mortal sins; and it would also show laudable devotion to name all the lesser sins that one can think of. According to Peñafort, some authorities insisted that venial sins as well as mortal sins had to be confessed, and Raymond believed that this was the safer course, though many doctors, relying on a statement of Bede, argued that only mortal sins need to be confessed.⁶⁸ The Ordinary Gloss to the Lateran decree says definitely that venial sins do not have to be confessed because they are taken away by other means.⁶⁹ If one followed this view, but was unsure whether a sin was mortal or not, one should confess it and let the priest decide, according to Burgh.⁷⁰ The Parson discusses the difference between mortal and venial sins (Parson'sT 358ff.), but does not say whether the latter had to be confessed; nor does he make it clear that venial sins were actually forgiven (“deleted”) by means that he lists for “refreining” (restraining) venial sins. He names communion itself, holy water, giving alms, reciting the *Confiteor*, and being blessed by bishops and priests (Parson'sT 385–86). Peñafort has a similar list for *deleting* venial sins, compiled mainly from Gratian,⁷¹ and so does Lyndwood; the latter includes all that the Parson notes and adds fasting; saying prayers, especially the *Pater Noster*; devoutly beating one's breast; receiving Extreme Unction; and confessing to someone not a priest.⁷²

It is best to go to confession as soon as possible after committing a sin (Parson'sT 998–1001), but one should not run lightly to the priest and tell one's sin like a joke. Frequent confession, however, done reverently,

⁶⁸ Peñafort, *Summa*, 3.34.21.

⁶⁹ Gloss to *X* 5.38.12, *Omnis utriusque*, v. *omnia sua peccata* (*CJC* 2:1872).

⁷⁰ Burgh, *Pupilla oculi*, V.3 §L, citing Aquinas, *In 4 Sent.*, Dist. 21.

⁷¹ Peñafort, *Summa* 3.34.60.

⁷² Lyndwood, *Provinciale*, 3.23.8 (p. 237 n. a).

is encouraged (Parson'sT 1024–25). Shriving more than once the same sin, a sign of humility and not required, gains the penitent additional merit and lessens punishment (Parson'sT 1024–26). This is what the ailing householder Thomas tells Friar John in *The Summoner's Tale*:

“I have be shriven this day at my curat.
I have him toold hoolly al min estat;
Nedeth namoore to speken of it,” seith he,
“But if me list, of min humilitee.”⁷³

(lines 2095–98)

The Parson, adhering to the Peñafortian scheme, treats neither enjoined penances nor absolution, except for brief allusions along the way, but instead goes on to speak of satisfaction in general, detailing various penitential actions that one can perform to reduce the punishment still owing for forgiven sins. He names specifically the giving of alms, fasting, saying prayers, and wearing hair-cloth (Parson'sT 1052–53). He finally returns to the sacrament by listing some things that keep persons from shrift, namely, fear, embarrassment, presumption, and despair (Parson'sT 1057).

In other sections of his works, Chaucer's references and allusions to confession show that it was an integral part of ordinary life in the Middle Ages. The Fourth Lateran Council commanded the yearly use of the sacrament of penance and the sacrament of the Eucharist; by the 14th century the practice of penance had become frequent, while communion remained for the most part at the yearly minimum.

Chaucer's depiction of penitential practices reflects in a popular register the ways in which decisions of councils and synods and the learned debates of scholars made their way into the lives of Christians, in part through works such as those of Burgh and Lyndwood. I have given only a brief summary of the some of the penitential contents of Burgh's and Lyndwood's works. For the most part, our two authors show that a sense of moderation and common sense reigned in deciding the fine points of law and punishment at the close of the Middle Ages. Those qualities undoubtedly contributed to the popularity of frequent confession in the 14th century.

⁷³ “I have gone to confession today to my curate. I have told him entirely everything about my state. There is no more need to speak of it,” he says, “unless I wish it, to show my humility.”

APPENDIX
PENITENTIAL LAW AND THEOLOGY AT THE TURN OF THE
FIFTEENTH CENTURY

- I. *Summary of John Burgh's Pupilla oculi (1385)—Edition of Paris 1527*
(from microfilm of the Vatican Library copy: Loreto V 45)

Parts:

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- 1. The Sacraments in General (2 chs.)**
- 2. Baptism (8 chs.)**
- 3. Confirmation (2 chs.)**
- 4. The Eucharist (10 chs.)**
- 5. Penance (27 chs.)**
- 6. Extreme Unction (2 chs.)**
- 7. Holy Orders (11 chs.)**
- 8. Matrimony (18 chs.)**
- 9. Consecration of Churches; Immunity of Churches; Tithes and Offerings; Fasts; Feastdays; Burials; Wills (8 chs.)**
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Chapter 15: Reserved Sins**Chapter 16: Exceptions****Chapter 17: Serious Injuries to Clerics****Chapter 18: Cases in which Striking a Cleric does Not Result in Excommunication****Chapter 19: Excommunicates Reserved to the Pope****Chapter 20: Excommunicates Absolvable by the Bishop****Chapter 21: Excommunications Required by Legatine and Provincial Constitutions****Chapter 22: Excommunication for violations of the Magna Carta and the Carta de Foresta****Chapter 23: Communicating with Excommunicates; Minor Excommunication****Chapter 24: Withholding Absolution until Satisfaction is Performed****Chapter 25: Vows****Chapter 26: Oaths****Chapter 27: Perjury, Lying, and Scandal***Part 5: De sacramento penitentie*

Chapter 1: Penitence in General. Burgh presents the fourfold distinction of penitence given by Richard Middleton in his Commentary on Lombard's *Sentences*: 1) the virtue of penitence, 2) an act of the virtue, 3) sorrow for sin (what we would normally call repentance), and 4) the remedy for mortal sin administered by a priest (that is to say, the sacrament of penance). Then, after stating Duns Scotus's more technical definition of the sacrament, he gives Ambrose's and Augustine's definitions, which he says are not sacramental, but refer to exterior penitence. He adds that another meaning of penitence is what is imposed by the priest in confession (what we in English call "penance"). Such penance is of three kinds: solemn, public, and private (1 §A).

But in going on to discuss solemn penance, he seems to contradict the definition just given: it is imposed by the bishop for notorious sins (1 §B). Therefore, we are to conclude, it is imposed in the external forum of the courts rather than in the confessional. Later, however, he acknowledges that a person can be compelled to undergo such penance for a public crime but not for a private one, unless the penitent is willing (1 §D). Still later he notes that the imposition of a public penance does not entail the revelation of a crime, even though suspicion might arise that such a penitent has committed something "enormous."

According to Aquinas, he says, a fault [*culpa*] is not known for certain from penance, because at times one person does penance for another person, or acts without any personal fault, in order to induce others to do penance (1 §F). One does not have to show sorrow for every open sin to anyone except one's priest, though when scandal is given, one should counter it by good example (1 §G).

Less solemn public penances, such as pilgrimages, can be imposed by the parish priest (1 §E). Burgh cites Aquinas as saying that such penance can be imposed on a cleric, if the crime is great and public. Burgh reports that Bernard of Parma in the Ordinary Gloss to the *Liber Extra* agrees, but Cardinal Hostiensis disagrees.⁷⁴ But once again we are in the juridical rather than sacramental sphere. Burgh also discusses here the role of general penitentiaries [*penitentiarii*] of the bishop and of the pope. He notes the practice of penitentiaries who require penitents to go *nudati* to all of the churches where the Roman curia currently resides, for three days, more or less, and then they send the penitents back to their own bishops for imposition of a salutary penance as the circumstances dictate. He passes on the warning of William Durandus in his *Repertorium* that certain miscreants [*ribaldi*] for the sake of gain display false credentials from the Apostolic See claiming to designate such penances (1 §E).

Chapter 2: Contrition. Here Burgh has a traditional discussion of contrition, until he comes to the subject of attrition, which is not mentioned, for instance, in Raymond of Peñafort's *Summa de penitencia*. He follows the scholastic distinction started by William of Auvergne (d. 1249), that attrition is sorrow without the benefit of sanctifying grace. He says that, according to Thomas Aquinas, sorrow willingly experienced for sins is called attrition when it is imperfect and unformed because of the lack of sanctifying grace [*gratia gratum faciens*], but it

⁷⁴ Burgh cites Aquinas "in *Scripto*" (that is, *Scriptum sive Commentarium super Sententias*), and Bernard on *X* (= *Decretales Gregorii IX = Liber Extra*) 5.38.7 (= Book 5, Title 38, *De penitentiis et remissionibus*, ch. 7, *Quesitum*) (CIC 2:885–86); for the comment of Bernard's Ordinary Gloss to this decretal that is being cited, see CJC 2:1867 v. *nisi in publicum*; online at: <http://digidev.library.ucla.edu/canonlaw/>.

Burgh cites Hostiensis's *Summa aurea*, 2: *De penitentiis et remissionibus*, v. *publica*, but it is difficult to find the place he means. See the edition of Venice, 1574 (repr. Turin, 1963): the work is divided into five books, covering the substance of the five books of the *Liber Extra*. The title *De penitentiis et remissionibus* is not in book 2 (as Burgh's citation would indicate) but in book 5 (by my count it is title no. 56); in this edition, the title contains numbered sections, none beginning *Publica*; types of penance are dealt with in §60 (cols 1835–44), but I can see no objection to punishing clerics publicly when they deserve it. He deals with punishing clerics at the beginning of §61, cols 1844–45.

becomes contrition if such movement of sorrow remains when grace is infused (2 §C).⁷⁵

Chapter 3: Confession. This chapter deals with the requirements of oral confession. Writing can be used by those incapable of speech. Aquinas says that if no priest is present, it suffices to confess to a layman, but Burgh believes (“ego tamen puto, salva majorum auctoritate”) that in danger of death such confession is not necessary; rather, contrition or mental confession suffices, but with the desire of confessing in the form required by the Church (3 §H). Mental confession for past sins is required of adult baptizands, without the obligation of confessing to a priest, either before or after the baptism (3 §P).⁷⁶

Even though the Fourth Lateran Council’s obligation to receive Communion annually is tied to the Easter season, the precept of annual confession is not, which Burgh makes clear: every adult believer is obliged to confess his or her sins at least once in the year (3 §R), but Burgh notes that anyone in the state of mortal sin is obliged to confess before receiving Communion. Although one is not obliged to confess a mortal sin right away, every time it comes to mind one must have contrition and the intention of confessing (3 §U). Burgh follows Aquinas in saying that not even the pope could dispense from the annual confession, though he could extend the limit beyond a year, etc. (3 §S); he also inclines towards Aquinas’s view on the question of whether a person with no mortal sins needs to confess once a year. Some say yes, because of the Church’s statute, but others (according to Aquinas) say it is enough to go to the priest and show oneself to be without sin, in order to be admitted to Communion, for the precept obligates only those who have mortal sins (3 §aa).

The Lateran Council specifies, Burgh says, that these obligations take effect “after one reaches the years of discretion.” Burgh does not define here the age at which one becomes an adult, but he does so earlier, when addressing the Lateran precept of both confession and communion;⁷⁷ there Burgh interprets the age stipulated as “near to

⁷⁵ For Aquinas’s precise position on attrition, see the discussion in my essay in this volume, above, pp. 245–46.

⁷⁶ This is a point not well understood, it would seem, by Thomas Malory in his *Book of Arthur*, when he has the Saracen knight Palomedes say, “This same day have me to the next church, and first let me be clean confessed, and after see you now that I be truly baptized”; *Le Morte d’Arthur*, book 12, ch. 14, ed. James W. Spisak, *Caxton’s Malory*, 2 vols (Berkeley, 1983), 1:426 (I modernize the spelling).

⁷⁷ The Lateran decree (X 5.38.12, *Omnis utriusque sexus*; CIC 2:887) reads: “postquam ad annos discretionis pervenerit.”

the status of adults, that is, when they are ten or eleven years old and signs of discretion and reverence for what is sacred appear in them, they can receive the sacrament of communion”; otherwise they should not receive communion, according to Aquinas (Burgh, Part 4, 8 §F). The canonists, however, consider the relevant age of discretion here to be around seven, when one is *doli capax* (capable of deceit), except for sexual sins, which become possible when the sexual members develop around the age of fourteen.⁷⁸ They avoid the question of whether girls start sinning sexually earlier, since their canonical age for marriage is 12, as opposed to 14 in boys.

In four circumstances, one is obliged to repeat one’s confession: if the confessor lacked the power to absolve the sins or if he was not one’s proper confessor; if the priest lacked discernment; if the confession was not “integral” [complete]; and if one failed to perform the penance enjoined—but Aquinas on this point says that an intention of complying suffices. Some say that if one lacks contrition and the determination to sin no more, the confession must be repeated; but Burgh says that only this pretense of contrition needs to be confessed (3 §ab). He also cites Aquinas on the benefits of confessing the same sins to multiple priests, both because the shame contributes to satisfaction (see next chapter on Satisfaction), and because the power of the keys is efficacious (3 §ac).

Chapter 4: Satisfaction. Satisfaction is the required complement to penitence. Following Peter of Poitiers, Burgh combines Augustine’s definition, which deals with the avoidance of sin in the future, with Anselm’s, from *Cur Deus Homo*, concerning recompense for past sins. The divisions of satisfaction are fasting, prayer, and almsgiving, but other

⁷⁸ Ordinary Gloss to *X* 5.38.12 v. *discretionis*: “id est, cum est doli capax; quia tunc potest peccare” (*CJC* 2:1871); referring first to *X* 5.23 (*De delictis puerorum*), c. 1, *Pueris* (*CIC* 2:824): “Pueris grandiusculis peccatum nolunt attribuere quidam, nisi ab annis quatuordecim, cum pubescere ceperint. Quod merito crederemus, si nulla essent peccata nisi que membris genitalibus admittuntur. Quis vero audeat affirmare furta, mendacia, et perjuria non esse peccata? At his plena est puerilis etas, quamvis in eis non ita ut in maioribus punienda videantur” [Some are unwilling to find sins in bigger children, except those from the age of fourteen, when they begin to enter puberty. We would be willing to believe this if there were no sins except those ascribed to the genitals. However, who would dare to say that stealing, lying, and committing perjury are not sins? But childhood age is filled with such sins—even though it would seem that these offenses in them should not be punished as severely as in older offenders]. This statement in the *Liber Extra* is attributed to “Gregory,” but it is really by Augustine, *De Genesi ad litteram* 10.13 (PL 34:417). The Ordinary Gloss, v. *grandiusculis*, says: “id est, doli capacibus, viz. septem annorum; tales enim et mentiri et verum dicere et confiteri et negare possunt,” etc.; v. *non ita*: “Nota quod omne delictum cadit in puerum postquam est doli capax, preter delictum carnis” (*CJC* 2:1760).

possible penances are mentioned, namely, vigils and pilgrimages, without discussion of how they fit into the three categories (4 §A). Almsgiving is said by Aquinas to encompass both fasting and prayer and to be more efficacious than both, while prayer is more beneficial than fasting (4 §K). Some priests have the laudable custom of saying to penitents, after giving them a specific penance, “May whatever good you do be effective for the remission of your sins” [Quicquid boni feceris sit tibi in remissionem peccatorum tuorum]. As can be gathered from one of Aquinas’s quodlibets, the power of the keys gives this general penance more efficacy than good works would otherwise have (4 §L).

Chapter 5: Restitution. Restitution is defined as a kind of prerequisite for satisfaction (5 §A). One is obliged to compensate those whom one has damaged spiritually (say, by inducing them to sin), either by attempting to bring them to repentance, or, since it is easier to pervert than to convert, by praying for them; one can also enlist the help of others, though without revealing secret sins (5 §B). Burgh follows Scotus’s teaching on ways of compensating for voluntary homicide (5 §C), and also for three different kinds of damaged reputations. First, if you have improperly revealed someone’s crime, you must try to alleviate the damage as best you can, but without lying: for instance, by saying that you spoke unduly and foolishly. The second kind of offense is to impute a crime falsely, and here the only remedy is to admit the falsehood, even if it means losing your own good name. The third type of offense is to deny a secret crime that you are rightly accused of, thereby bringing infamy on your accuser. However, you do not have to retract your denial or to confess your crime; it is enough to alleviate his infamy by saying that you do not think him a calumniator, either because he probably had a good intention or wrongly believed that he could prove it. It would be better in such cases not to make a simple denial of an alleged crime, but to use the jurists’ response, that is, denying the proposition as proposed, for example, when the crime is alleged as public and provable, whereas in fact it is occult and not provable (5 §D).

Standard doctrine about restitution follows, citing Aquinas (5 §E), Scotus (§§E–F), Raymond of Peñafort (§§G–L) William of Rennes’s gloss on Raymond⁷⁹ (§§G, N), Hostiensis (§P), and the *Summa confessorum*

⁷⁹ William of Rennes’s *Apparatus ad Summam Raymundi* was composed not long after the *Summa* itself and was often included in copies of the *Summa*. See Johann Friedrich von Schulte, *Die Geschichte der Quellen und Literatur des canonischen Rechts von Gratian bis auf die Gegenwart*, 3 vols (Stuttgart, 1875–80, repr. Graz 1956), 2:413–14.

of John [of Freiburg], in the “title” *De restitutione*, question 70 (§J) and 69 (§Q).⁸⁰

In a long section on war, he cites the “chapter” *De bello* of the *Summa confessorum*.⁸¹ In a just war, one can keep goods acquired from the enemy, to the extent of making up losses, according to the canon *Si de rebus* of Gratian.⁸² The requirements of the public (contentious) forum and the internal or penitential forum are different: one is bound to restitution in the latter not only for causing damage but also for giving the occasion for causing damage. If a subject does not know whether his lord’s war is just, he is excused from restitution because of the good of obedience. A cleric accompanying his lord to war may receive plunder from those with a right to plunder, but he sins if he himself plunders or engages in warfare (5 §R).

Burgh notes the provision of *Liber Extra* 5.39.54, that preachers who exhort predators to repentance and restitution can licitly receive alms from them, especially if they have no other means of sustenance (5 §S). Judges are required to make restitution not only when they deliberately give bad judgements, but also when they neglect to read up sufficiently on the matter in dispute (5 §X). They are also obliged to restrain their officials and summoners (5 §Y).

Burgh takes his doctrine on simony from Freiburg’s *Summa*, the title *De simonia*⁸³ and elsewhere, *sparsim* (5 §ac). He cites Raymond on classifying clergy as *raptores* who give church goods to prostitutes or to relatives for the sake of enriching them (5 §ad). Some authorities say that playing dice is prohibited, because it fosters idleness and does not exercise the human mind, and therefore gains from it should be given back. Others, however, deny this, unless one is subject to imperial law, for canon law does not prohibit this sort of gaming, except perhaps implicitly in approving imperial laws not contrary to the canons. But Richard Middleton says that gaming winnings can be recovered by the losers in a court of law (5 §ae). That is, restitution is not required by

⁸⁰ John of Freiburg, *Summa confessorum*, book 2, title 5, rubric *De restitutionibus* before qq. 64–99 (Lyons, 1518), fols 65–60.

⁸¹ Ibid., book 2, title 5, rubric *De bellis* before qq. 44–63 (fols 62–65).

⁸² Gratian, *Decretum*, C. 23 q. 7 c. 2, *Si de rebus* (CIC 1:951); actually, this text applies more appropriately to what follows, about the allowability of keeping the goods of heretics. See rather the canon *Nullius* (CIC 1:418); the crimes of others do not implicate those unaware of them. Therefore, the goods of innocent subjects must not be plundered.

⁸³ John of Freiburg, *Summa confessorum*, book 1 title 1, fols 1–3.

law unless ordered by a judge's sentence. It is clear that Burgh takes his whole treatment of this question from Middleton.⁸⁴ He also draws on the same source for the next section, on finders not allowed to be keepers (5 §af). In one of the following sections on buying and selling, he contrasts what Freiburg presents with Scotus's view (5 §al), and again on the timing of restitution (5 §ao).

Chapter 6: Confessors. The pope can choose his own confessor, but there are rules for everyone else: cardinals (6 §A), curial chaplains, patriarchs, archbishops, bishops, lower prelates, abbots (6 §B), monks, secular priests, emperor and empress (6 §C), the king, dukes, etc. (6 §D). Simple knights, merchants, rustics, and children of sufficient age go to their parish priest, with various qualifications (6 §E). Nobles can confess to the priest in charge of the parish where they currently reside (6 §H).

A priest can hear his parishioners even outside the parish, as Hostiensis notes (6 §J). When a priest has received jurisdiction from a superior to hear the confessions of parishioners of another parish, it is not done to the prejudice of the parish priest or for the commissioned priest's benefit but for the benefit of the people and the honour of God, according to Aquinas; but, according to the extravagant *Vas electionis* of John XXII (1321), a penitent confessing to the commissioned priest is not required to do it again to his proper priest (6 §L).⁸⁵

The parish priest is to believe a parishioner who says he has been absolved by another confessor, unless there is some other impediment; for instance, if he has been excommunicated in a church court, he cannot without further ado claim that he has been absolved, following Aquinas, confirmed by Peter (of Tarentaise, that is, Innocent V) and Hostiensis. Burgh cites "a certain constitution" [*quedam constitutio*] that says that a priest should not give communion to anyone without proof of his having gone to confession; then he cites William of Rennes's gloss on Raymond of Peñafort, and John of Freiburg's *Summa* (6 §M). If there are good reasons for not confessing to one's own priest (he is a heretic, a seducer, a revealer of sins, etc.), one should try to get

⁸⁴ Ricardus de Mediavilla, *Super quatuor libros* (n. 38 above), 4.15.5.8: "Utrum homo teneatur restituere ea que lucratus est per ludos prohibitos" (4:225–26).

⁸⁵ Burgh says that he treats this question above, 3 §aa (*recte*, §ac), but there he does not mention the extravagant, which condemns the views of John de Pouilly that the pope did not have the power to modify the requirements of the Lateran decree of 1215—for instance, by allowing penitents to make their annual confession to friars rather than to their own priests. *Extravagantes communes*, 5.3.2, *Vas electionis* (CIC 2:1291–92).

permission for another confessor; if not possible, one can act as if no confessor were available and even confess to a layman. Aquinas says this, backed by Peter and Innocent (6 §N). The seventh of Hostiensis's eight reasons for confessing to a priest not one's own, namely, danger of death or fighting a war or going to sea, states that one can confess to a layman, if necessary, even though he could not give absolution. For one who confesses to a neighbour when a priest is not available will receive pardon, though not as quickly as when absolved by a priest; here Burgh cites the (pseudo-Augustinian) canon *Quem penitet*⁸⁶ in the interpretation of Aquinas and Hostiensis (6 §O).

Dominican and Franciscan friars who wish to hear confession in a diocese are to present themselves to the bishop, who will licence them; if he refuses to do so, for no good reason, the necessary licence will be supplied by papal authority. The licence does not confer powers greater than those possessed by the parish priests, unless the bishop explicitly says so. All this is according to the Clementine decretal *Dudum*, reinstating Boniface VIII's *Super cathedram* (6 §U).⁸⁷ On powers of a confessor delegated by the bishop, Burgh cites the commentary of John Andrew on *Sext* 1.14.12, *Is cui* (6 §ad).⁸⁸ He ends this chapter by speaking about the confessor's obligation to conceal everything the penitent has said in confession. According to William of Rennes's comments on Raymond of Peñafort's *Summa*, one can use what would later be called mental reservation, responding to a judge, "I know nothing of that," meaning, "As a man, I know nothing about that which should be revealed to you." As Richard says, mere silence could sometimes arouse the judge's suspicion (6 §aq). Again, William says that the response to any unjust inquiry must be silence, a change of subject, or a sophistical answer. Aquinas warns not to receive anything under the seal easily, but whatever is received is privileged (6 §au).

Chapter 7: Confessing and Hearing Confessions. If you, the confessor, are unfamiliar with a penitent, you should ask for background information. The penitent is to sit humbly at your feet, and, if it is a woman, instruct her to sit sideways, so that you do not see her face,

⁸⁶ Gratian, *Decretum*, *De pen.* 1.88 (CIC 1:1187–88), from the pseudo-Augustinian treatise *De vera et falsa penitentia*, capp. 10–11 (PL 40:1122–23).

⁸⁷ *Clem.* 3.7.2, *Dudum* (CIC 2:1161–64).

⁸⁸ John Andrew was the author of the Ordinary Gloss to the *Sext* (see n. 11 above), and a further commentary, the *Novella in Sextum librum*, in the 1340s.

which, as Habakkuk says, is a burning wind. If the penitent is simple, see whether he or she knows the Lord's Prayer, the Angelic Salutation, and the Symbol of Faith, and, if not, teach them, or admonish the penitent to learn them. Then urge repentance and confidence in God's forgiveness (7 §A).

The priest is not to hear confession with the intention of receiving some temporal benefit from the penitent, which would make him answerable to the all-knowing Judge (citing Innocent III's decretal *Tua nos* on simony).⁸⁹ Nevertheless, he should devoutly accept whatever is freely offered by the penitent, however small, and not spurn it out of contempt, as some great prelates do, thinking it shameful to them; for the whole church is sustained by alms. It is honourable, moreover, for the penitent to give something as a sign of devotion at the time of confession, though he is not bound to do so by the letter of the law. Laudable local customs are to be observed in this matter. But if the penitent wishes to give nothing, penance or absolution should not therefore be withheld, as Hostiensis notes in his *Summa*, *De peccatis*, 18 (7 §B).⁹⁰

The confessor should hear confessions with face averted, lest he should disturb the penitents by looking at them (7 §C). Burgh gives sample confessions, running through various sins (in the next chapter, he says, he will review questions that the priest can pose on each subject). For instance, the penitent might say, "I also sinned through lust, by shameful looks, impure embraces, kisses, touches, dirty thoughts; in full consent and will to commit an illicit venereal act, even though I was not able to carry it out, I did it in my heart and I made efforts to accomplish it, and I took morbid delight in such thoughts. I committed fornication, incest, adultery," etc. (7 §K) (see the confessor's questions in 8 §K below). Burgh intends his long sample confession as a means for penitents to review their sins; they should not, of course, confess sins they have not committed (7 §S).

Some of Burgh's sample faults clearly fall well below the level of not only mortal but also venial sins and should, rather, be classified under the rubric of points to be improved upon for a virtuous life. For instance: "I did not prepare myself to receive God's grace as I could

⁸⁹ *X* 5.3.34 (*CIC* 2:763).

⁹⁰ There is no such title in Hostiensis's *Summa*. He does deal with sins in book 5, title [56], *De penitentis et remissionibus*, nos. 8–13. *Summa aurea* (Venice 1574, repr. Turin 1963), (cols 1753–60).

have and should have; I abused God's benignity and patience; I did not meditate on death as assiduously as I should have, and did not daily and patiently accept bodily infirmities and worldly afflictions for my sins, but I murmured; I did not give due thanks to my God for His benefits; I did not long for heavenly things with ardor and sought after spiritual goods tepidly and neglected my conscience; I offended my guardian angel and the saints with my wicked deeds" (7 §R).

Apart from the citing of Innocent III and Hostiensis, there are no other references to sources in chapter 7, and the same is true of the following chapters, which deal with questions that the priest can ask. He provides a lead-in statement for such questioning: "Perhaps not everything that you have done occurs to your memory now. Therefore I will question you about some matters. You therefore take care lest at the Devil's instigation you presume to conceal something of your sins" (7 §S).⁹¹

Chapter 8: General Questions to be asked during Confession. The confessor is to be cautious in his questioning, lest he be the cause of ruin rather than remedy (8 §A). Simple penitents should be questioned about their faith: do they understand the articles of the creed and know the Ten Commandments? (8 §B–C). Questions about the seven deadly sins follow. The longest section is on lechery; among the questions are the following. Did the penitent ever attempt to satisfy lust with someone other than a woman? (Do not be overly explicit in inquiring about how it was done). Did he have to do with a pregnant or menstruous woman or one in childbed? Did he use incantations or sortileges for fulfilling lust, or commission their use, or believe in them? Did he make lecherous songs, or sing them, or willingly listen to them? Did he experience pollution during sleep, and under what circumstances? While awake? What was the cause?⁹² Did he lust for a woman, or wish to be lusted for? [Si concupierit aliquam, si concupierit se concupisci?]. Did he commit the sodomitic vice? (this is to be asked cautiously: for instance, "Did you ever emit the seed of coitus anywhere but in a woman's vessel?"). Did he abuse his wife in one of the five ways named in this distich:

⁹¹ "Fortassis, carissime, non omnia, quae gessisti, ad memoriam modo veniunt. Ego te interrogabo" is drawn from instructions circulating in the central Middle Ages; see the essay in this volume by Karen Wagner, n. 62.

⁹² Note that there is no word here about active masturbation; this is a typical reticence.

Quinque modis peccat uxor marito abutens:
Tempore, mente, loco, conditione, modo.

He refers here to his fuller treatment in his chapter on the mortal sins in Part 10 (8 §K).⁹³

Chapter 9: Special Questions for Different Persons. The confessor poses questions for specific kinds of penitents: king and princes (9 §A), magnates⁹⁴ (9 §B), judges and advocates (9 §C), merchants (9 §D), craftsmen (9 §E), rustics (9 §F), and young scholars (9 §G). Merchants are to be told that if they use false measures in contravention to article 22 of the Great Charter (*Magna Carta*) they are excommunicated; and craftsmen should be asked if they have failed to obey the statute *De artificibus*. Students are to be asked if they have frequented taverns, the cells [*cellule*] of prostitutes, public spectacles, and dances to the neglect of their studies. Such faults are allegedly summed up in these hexameters:

Obsunt doctrine meretrices atque taberne
Discursus; sperne, ne sint tibi causa ruine.
Discere non pudet vultum; doctores honora;
Nec male tempus eat; vigilans attente labora.⁹⁵

⁹³ In the indicated chapter (4) in Part 10, Burgh attributes these “five ways” of “impetuous marital sex,” which proceeds from lust alone and goes beyond the bounds of honesty and reason, to Aquinas, *De veritate*, 3. (This treatise has to be by someone other than Aquinas. As I noted in n. 51 above, Lyndwood also cites a spurious *De veritate* attributed to Aquinas.) He gives them in the order of mind, mode, time, place, and condition; such sinful sex occurs: 1) when it is done for sating lust, through whorish blandishments; 2) when it is done in an unnatural way; 3) when it is done at a prohibited time; or 4) in a prohibited place; or 5) when the wife is near to giving birth or menstruating. Burgh’s view is that marital sex for delight alone is a mortal sin if placed before the love of God, but venial if not (Part 10, 4 §O). These considerations are rather conservative, reflecting a Levitical frame of mind, in comparison with the prevalent canonistic treatments. See H. A. Kelly, *Love and Marriage in the Age of Chaucer* (Ithaca, N.Y., 1975), ch. 10: “The Too Ardent Lover of His Wife Classified,” pp. 245–61. As for Aquinas, on the topic of menstruation, he argues that sex during ordinary menstruation is prohibited not for the Levitical ceremonial reason (uncleanness) but because it is dangerous to the health of a child conceived from such intercourse (*In 4 Sent.* 4.32.2b; *Index thomisticus, Supplementum [ITS]*, ed. Roberto Busa, 7 vols [Stuttgart, 1980], 1:596). It is not licit to ask for sex on days given over to spiritual things, because of the distracting nature of the pleasure involved, but doing so is not a mortal sin (*In 4 Sent.* 4.32.5ab; *ITS* 1:597).

⁹⁴ I correct the 1527 reading of *Mulieres* to *Magnates*.

⁹⁵ “Prostitutes and tavern-talk obstruct learning; spurn them, lest they cause your ruin; there is no disgrace in learning; honor your teachers; let not the time pass badly; be vigilant and work attentively.” There are false quantities in lines 2 and 3: the final *e* in *sperne* is short, but is here scanned as long; the first syllable of *pudet*, taken here as long, should be short, and the final syllable of *doctores*, used here as short, is long.

Priests are to be asked, among other things, whether they give their own goods or the goods of the Church more willingly to a minstrel [*joculator*] or prostitute than to a poor person, and if they commonly go hunting (9 §H). Burgh ends with a set of verses for priests and begins the next section with another set for the religious under vows (9 §J). Finally, when prostitutes come to confession, the priest should tell them how greatly they offend God by selling their bodies in the service of the Devil; they incur the guilt also of enticing others to sin, or of consenting to those who willingly sin with them. And since they are the occasions of other sins, the priest should ask about such sins as well (9 §K).

Chapter 10: Deciding on Absolution. In determining whether to grant absolution, the priest must consider whether the penitent has sufficiently resolved to make restitution (10 §A), or whether one of the confessed sins is reserved to the bishop (10 §B), or whether there is a firm purpose of amendment. He follows the injunction of Pope Alexander III's *Quod quidem* in the *Liber Extra*⁹⁶ that the priest should accept the confession of a sinner who is unable to stop sinning, even though he does not show true penitence; for even though he cannot be absolved, he can be counseled and given a penance (10 §C). Once the penitent is found to be willing to forgive offenses against himself, he is to be given a suitable penance. "Today," Burgh says, "penances are arbitrary" (meaning that they are up to the judgement of the confessor), as Pope Leo notes in the canon *Tempora penitudinis* (which was written a millennium earlier).⁹⁷ After citing William Durandus to distinguish between internal and external penances (10 §E), he notes that according to Gratian's canon *Hoc ipsum*, every mortal sin deserves seven years of penance,⁹⁸ but this is to be taken to refer to public crimes, which should be punished according to their gravity and attending circumstances, whereas secret crimes are to be punished according to the judgement [*arbitrium*] of the penitencer, as stipulated in the decretal *Quesitum* of Clement III (10 §F).⁹⁹ The priest can say to the penitent, "You have committed such and such a number of mortal sins, for each of which you should do penance for seven years; but because you may not live

⁹⁶ X 5.38.5, *Quod quidem* (CIC 2:885).

⁹⁷ Gratian, *Decretum* C. 26 q. 7 c. 2, *Tempora penitudinis* (CIC 1:1041–42), from a letter of Leo I written A.D. 458.

⁹⁸ Ibid., C. 32 q. 2 c. 11, *Hoc ipsum* (CIC 1:1155).

⁹⁹ X 5.38.7, *Quesitum* (CIC 2:885–86).

long enough to carry it out, I enjoin on you such and such a penance for all of them, and I grant that all of the indulgences of prelates that you may gain by your labor or alms will be of benefit for you, and I enjoin as penance all of the good that you will do and all of the ills that you will tolerate” (10 §G). The penance should not be too harsh or too lenient. A moderate penance might be to say a *Pater noster* and *Ave Maria* every day, or to go to church every week.

Chapter 11: Penances. On matching penances to sins, he cites John of Freiburg (11 §A). He gives the most space to lying and perjury (11 §B). When dealing with drunkenness, he notes that accidental inebriation is counted by Aquinas in the *Summa* as a venial sin (11 §K). Pregnant women should be enjoined to abstain from heavy work, and mothers should nurse their own children (how this fits with the subject of penances is not clear). An adulterous wife should not be given penances that would arouse her husband’s suspicion, like pilgrimages, vigils, frequent and unaccustomed fasting, or the use of haircloth. Nor should she be urged to give great alms, unless perhaps from her own goods, with the approval of her husband (we see something of a conflict here: the wife is not to spend her goods without the approval of her husband, but she is to do it without any indication of why she is doing it). Similar precautions are to be observed with adulterous husbands (11 §M). Penances for common prostitutes are to be for adultery, incest, and other sexual crimes, because they do not know whether they have had sex with priests, religious, married men, or men of other conditions. But (here he cites the Ordinary Gloss to the *Liber Extra*),¹⁰⁰ no penances are to be given to persons entering religion (11 §N).

Then Burgh once again addresses the case of laymen who do not know their prayers. They should be enjoined to say the Lord’s Prayer, which should ideally be said seven times a day, and also the Angelic Salutation and the Symbol of Faith, which they should not put off learning, and every day they should make the Sign of the Cross with the Latin formula, “in nomine Patris,” etc. (11 §O). No penance is to be given to the dying, though according to Hostiensis the priest can indicate what the penance would be if they were not dying (11 §Q).

The priest is not to enjoin penances that are too harsh, and he is to warn penitents against inflicting dangerous austerities upon themselves. He should also avoid giving penances for the sake of filthy lucre—like

¹⁰⁰ X 3.34.4, *Scripture*, v. *temporale obsequium* (C7C 2:1280).

requiring a new mother who has had sex with her husband before her purification to bring her offering to the altar each time a woman is purified in that parish; or ordering a penitent who has committed homicide or procured the death of another to match the death offering for everyone who dies in the same parish; or, out of cupidity, urging annuals, triennials, and the like from which he himself will profit. All these things, Burgh says, are prohibited in a synodal constitution, the chapter *Debentes*, paragraph *Audivimus* (11 §R).¹⁰¹ This is from the statutes of Robert Grosseteste, bishop of Lincoln, c.1239, which Burgh may be citing from a *Synodale*.¹⁰² Grosseteste's legislation was not incorporated by Lyndwood into the *Provinciale* because it was diocesan, not provincial.

Chapter 12: Difficult Cases. The first case is of a woman who confesses that she has had a child by another man or otherwise introduced a spurious heir to her marriage. Burgh suggests advising her to confess her sin to the bishop and let him deal with it. The solutions will depend on the character of the son and the husband and whether the wife has or will have goods of her own. He cites Raymond, Hostiensis, Innocent IV, William of Rennes, and finally “Fa.,” presumably Johannes Faventinus (12 §A). William is cited on a case in which a man has sons by an adulterous remarriage (12 §B), and on wives with illegitimate children: such wives can make these offspring their heirs, to some extent, if custom permits (12 §C). He then gives William's summary of “legitimate portions” in Roman inheritance law, but adds that local custom frequently goes against these laws, as is explained in the *Summa confessorum* (12 §D).

Next he deals with perjury in marriage trials (12 §§E–F). A woman who vows perpetual continence and then marries is validly married, unless the vow had been solemnized by entry into religion. The same is true of a man: a simple vow does not invalidate marriage, but a solemn vow does, or ordination to a major order (subdeacon and beyond), as is spelled out in the *Sext*.¹⁰³ According to some authorities, a woman

¹⁰¹ Burgh, 11 §R, c. *Debentes*, §*Audivimus*.

¹⁰² *Councils and Synods with Other Documents Relating to the English Church*, vol. 2: *A.D. 1205–1313*, ed. F. M. Powicke and C. R. Cheney (Oxford, 1964), part 1, pp. 267–78. The heading there is *Sermo in synodo*, the incipit is *Debentes*, and *Audivimus* begins in §27 and includes §28 (p. 272). Perhaps Burgh was using a source like MS D (see *Councils and Synods*, 2:1:267): MS London, BL Royal 11.B.X, late 14th century, which contains these constitutions (fol. 176: *Constitutiones synodales hic incipiunt*) and other material for the use of parish priests. I owe this identification to Jacqueline Brown.

¹⁰³ *Sext.*, 3.15.1, *Quod votum* (CIC 2:1053).

who gets married after vowing chastity cannot ask her husband for sex without sinning mortally. Burgh does not commit himself on the point, but he does say that her confessor should urge her not to seek the marital debt, but she is obliged to acquiesce to her spouse's explicit and even implicit requests. She should do so with sorrow, however, and be penitent for her broken vow for the rest of her life, unless she has been dispensed by the pope, in accord with the Gloss to the chapter *Rursus* in the *Liber Extra*, and Hostiensis's commentary, and the Gloss to the chapter *Veniens* (12 §F [bis]).¹⁰⁴ A man who commits adultery with his stepdaughter (the daughter of his wife by another man) similarly cannot exact the marital debt but must pay it. If his wife dies, he should not remarry anyone, though if he does the marriage is valid; penance is to be given for incest and adultery, following the *Liber Extra* and its gloss (12 §G).¹⁰⁵

A man who knowingly has sex with two sisters or cousins should never marry, citing the canon *Si quis cum duabus* of Gratian.¹⁰⁶ But some say that even if he was aware that they were sisters, he is permitted to marry *ex clementia misericordie*, if he is unable to remain celibate; but, of course, he can only marry a woman that he is permitted to marry (which would not include either of the sisters, since he is related to each by affinity). The laws that say the contrary are speaking according to the rigor of the canon (12 §H). Then comes the case of affinity caused when a man sleeps with the mother of his wife, before or after he has sex with the wife; Burgh draws here on Hostiensis, who cites the Gloss to another *Veniens* (12 §J).¹⁰⁷ He then deals with marriages entered into in spite of impediments (§K) and with impediments of spiritual kinship (12 §§M–N).

He ends this chapter by taking up the dilemma of nuns who have been sexually corrupted in monasteries in which only virgins are to carry lighted candles on feastsdays: if such an offender does carry a candle, she lies to God and sins mortally; if she carries an extinguished candle, she reveals her sin and scandalizes the community. She is to be counseled to feign illness when the feastday approaches; this is not a lie, because she is in fact mentally ill. However, what if a corrupted nun is elected and consecrated abbess in a monastery where only virgins

¹⁰⁴ Referring to *X* 4.6.5, *Veniens*, and 4.6.6, *Rursus* (*CIC* 2:686).

¹⁰⁵ Citing *Liber Extra* 4.13.1, *Si quis* (*CIC* 2:696–97).

¹⁰⁶ Gratian, *Decretum* C. 33 q. 2 c. 16, *Si quis cum duabus* (*CIC* 1:1157).

¹⁰⁷ *X* 4.12.2, *Veniens* (*CIC* 2:696–97).

are eligible? She is to be counseled to resign, according to the canon *Juenculas*¹⁰⁸ and its Gloss (12 §O).

Chapter 13: Canonical Punishments. “Here are recited with summary brevity the minutely [*seriose*] collected penitential canons.” Burgh may be drawing on the list of 46 such canons that Hostiensis details as required knowledge for every priest.¹⁰⁹ One might think that Burgh sets them out with some reluctance, but, as we will see, he is in favour of them when they are seen to be reasonable. First comes the extraordinarily harsh ten-year penance to be enjoined upon a priest who has committed fornication or adultery, according to the canon *Presbyter*, taken from an old penitential (13 §A).¹¹⁰ This punishment, like most of those that follow, dates back to a time when there was no clear distinction between the internal and external forum, and before the stern safeguards placed upon confessional secrecy at the Fourth Lateran Council were put into place. But sometimes a distinction is made between public and private, as in the second penance cited, based on the canon *Si quis sacerdos*:¹¹¹ a priest who has sex with his spiritual daughter—that is, Burgh explains, a woman whom he has baptized or heard in confession—is to do penance for 12 years. If the sin is public, he is to be deposed from his office and go on pilgrimage for seven years, and then serve God in a monastery for the rest of his life.¹¹² The woman with whom he sinned is to be handed over to religion (made to serve as a *conversa* in a monastery until death), and her possessions given to the poor (13 §B). No such distinction is made with regard to the third penance cited, though perhaps it is implied: if a cleric has sex with an animal or sins against nature in some other way, he is to be deposed, or, if corrigible, consigned to religion to live in perpetual continence. A layman should be excommunicated and removed from the body of the faithful until he does condign penance. The operative law here is the decree *Clerici* of the Third Lateran Council of 1179.¹¹³

¹⁰⁸ Gratian, *Decretum* C. 20 q. 1 c. 12, *Juenculas* (CIC 1:846).

¹⁰⁹ Hostiensis, *Summa*, book 5, title [56], *De penitentiis et remissionibus*, no. 60 (*Que pena*), § *Ut autem sacerdos*, cols 1837–41.

¹¹⁰ Gratian, *Decretum* D. 82 c. 5, *Presbyter* (CIC 1:292–93).

¹¹¹ Gratian, *Decretum* C. 30 q. 1 c. 10, *Si quis sacerdos* (CIC 1:1099).

¹¹² Actually, the canon says that the priest is to be deposed, go on pilgrimage for 15 years (the Roman edition of 1582 says 12 years), and then go to a monastery.

¹¹³ X 5.31.4, *Clerici* (CIC 2:836). The decree only speaks of “the incontinence that is against nature,” without specifying bestiality.

This sin, Burgh adds, is worse than having sex with one's own mother, according to Augustine in the canon *Adulterii* (13 §C).¹¹⁴

It is not clear how such canons are to be dealt with in the modern dispensation (that is, after the rules for private confession were laid down in 1215). After reciting the first punishment, Burgh adds: "But Hostiensis understands this penance as intended for a public crime. For a priest should not do public penance even for a public sin, like a layman. Again, some say that it applies to simple fornication, but others more truly say that it is for adultery and incest, according to Raymond" (13 §A).¹¹⁵ An unspoken corollary is that if such a penance were enjoined in the secrecy of confession, the confessor could not oblige the penitent to do penance in such a way as to make his sin public.

The fourth penance that Burgh cites actually comes from a decree of the Fourth Lateran Council, namely, *Cum inhibitio*, but Burgh's summary distorts its meaning (the same is true of Hostiensis). According to Burgh, any priest who participates in a clandestine marriage and does not prohibit such unions is to be suspended from office for three years or punished with an even graver penalty if the character of the offense warrants (13 §D). But *Cum inhibitio* actually specifies this punishment, which is obviously to be imposed in the external forum, for conniving at the marriage of persons related within the prohibited degrees of kinship. When the couple are not so related, a different punishment is to be assigned to the priest for this lesser matter, one that is appropriate (*condigna*) to the offense.¹¹⁶

Other penances culled from Gratian follow: for breaking a simple vow (13 §E), for saying Mass while excommunicated (13 §F), for false accusations of murder and other acts of perjury, or homicide, adultery, or fornication, specifying that anyone unwilling to accept the penance

¹¹⁴ Gratian, *Decretum*, C. 32 q. 7 c. 11, *Adulterii* (CIC 1:1143). For an account of how this doctrine was ascribed to Augustine, see H. A. Kelly, "Bishop, Prioress, and Bawd in the Stews of Southwark," *Speculum* 75 (2000), 342–88, p. 344 n. 9.

¹¹⁵ Burgh, 13.A: *Sed hanc penitentiam intelligit Hostiensis injungendam pro peccato publico. Non enim debet sacerdos publice penitere, etiam pro peccato publico, sicut laicus. Item hec dicta quidam intelligunt de fornicatione simplici, alii et verius de adulterio et incestui, secundum Raymundum.* Hostiensis (col. 1838) does observe that the canon deals with a public crime, but he does not make the distinction between priest and layman. He does say, however, that whenever a priest commits a sin that leads to deposition, a similar penance is to be imposed on him. He also says that some see the canon as applying to simple fornication, while others say that it deals with adultery or incest.

¹¹⁶ X 4.3.3, *Cum inhibitio* (CIC 2:679–80); Lateran IV, can 51 (Tanner, *Decrees of the Ecumenical Councils*, 1:258).

is to be excommunicated (13 §G), sex with spiritual daughter or mother (13 §H), marrying a woman espoused (i.e., married) to another (13 §J), sex with two sisters (13 §K), and so on (13 §L).¹¹⁷ Burgh's comments on homicide are the same as the distinction concerning homicide by reason of self-defense that is found in a canon in Gratian¹¹⁸ and a chapter from an old penitential incorporated into the *Liber Extra* (13 §M).¹¹⁹ The penance for a priest who kills someone after beating him in the name of discipline also comes from the *Liber Extra*, a decretal of Alexander III (13 §N).¹²⁰ Gratian or the *Liber Extra* is the source of penances for matricide (13 §O), uxoricide (13 §P), perjury (13 §Q), using false measures (13 §R), and having sex with a nun or marrying her (13 §S), though for the last-named offense Burgh also cites the *Clementines*.¹²¹

Also from Gratian are the penances for singing Mass without receiving communion (13 §U), a priest or deacon wrapping a deceased layman in the altar pall (13 §U [bis]), and the sacrilege of stealing from a church (13 §X). For public blasphemy, he cites a provision that Gregory IX specifically made for inclusion in the *Liber Extra*, designating a fine of 40 *solidi* for a wealthy offender, or 30, 20, or 5 for others (13 §Y).¹²² This clearly has to do with the external forum and not confession. The next penance mentioned, the Fourth Lateran provision against confessors who break the seal of confession¹²³ (13 §aa), would also pertain to the external forum.

More penalties from Gratian cited by Burgh in this chapter are for perjury (13 §§ab,ac,[ae]), for swearing not to make peace with one's neighbor (13 §ad), and for sortilege (also from *Liber Extra*, attributed to the Penitential of Theodore, and from Alexander III, involving the case of a priest investigating a theft by use of an astrolabe) (13 §af).¹²⁴ In contrast, arson is referenced to the *Liber Extra* (13 §ah) and usury to the *Liber Extra* and the *Sext*,¹²⁵ and the penance for the latter is to be

¹¹⁷ Gratian, *Decretum* C. 22 q. 1 c. 17, *Predicandum* (CIC 1:866).

¹¹⁸ Gratian, *Decretum* D. 50 c. 6, *De his clericis* (CIC 1:179).

¹¹⁹ X 5.12.2, *Interfecisti* (CIC 2:793–94).

¹²⁰ X 5.12.7, *Presbyterum* (CIC 2:796).

¹²¹ Clem. 4.1.1, *Eos qui* (CIC 2:1177–78).

¹²² X 5.26.2, *Statuimus* (CIC 2:826–27).

¹²³ X 5.38.12, *Omnis utriusque*, Lateran IV, can 21 (Tanner, *Decrees of the Ecumenical Councils*, 1:245).

¹²⁴ X 5.21.1, *In tabulis*, and 5.21.2, *Ex tuarum* (CIC 2:822).

¹²⁵ X 5.19.3, *Quia in omnibus*; c. 5, *Cum tu* (CIC 2:812); *Sext* 5.5.2, *Quamquam* (CIC 2:1081–82).

“arbitrary” (13 §ai).¹²⁶ Similar treatment is given to pillaging (13 §ak) and damaging churches (13 §al). The penalty of three weeks’ fasting for taking food when hungry, unless it is given back, is passed on by the *Liber Extra* from the penitential of Theodore,¹²⁷ but Burgh invokes the Gloss to eliminate the penance altogether (13 §am).

The seven years of penance for rebaptism is taken from Gratian, but, in addition to citing other parts of Gratian, Burgh invokes Duns Scotus and the Gloss to *Liber Extra* (13 §an). Seven or five years of penance is to be given for suffocating one’s child in bed, or three years for lesser negligence. The latter penance is to be found in the *Liber Extra*, but no specification is given in the canon of Gratian cited.¹²⁸ Burgh adds that if the fault is public, the penance is to be solemn; otherwise any penance given is to be secret (13 §ap).

The penalties for consorting with heretics come from Gratian (13 §aq),¹²⁹ whereas those for killing a thief without necessity (13 §ar) and for killing a priest (13 §as) are from ancient canons incorporated into the *Liber Extra*.¹³⁰ All are clearly matters for the external forum, as are those dealing with criminal clerics: clerics caught and convicted of great crimes are to be degraded and put to penance in strict monasteries, according to a decretal of 1202 of Innocent III,¹³¹ and others are to be punished according to canons in Gratian (13 §at). Likewise from Gratian are penances for clerics who deviate from the local manner of saying the canonical hours (13 §av), bishops who fail to punish simony and clerics who commit simony (13 §ax), but the *Liber Extra* is also invoked (13 §ay). A canon of Gratian is adduced for punishing a bishop who ordains an unworthy candidate (13 §az).¹³²

Also in 13 §az, Burgh cites a decretal from the *Sext* against assaulters of cardinals.¹³³ He goes on to invoke the *Clementines* against those who strike or banish bishops (13 §ba).¹³⁴ Then a canon from Gratian is

¹²⁶ X 5.38.3, *Significavit* (CIC 2:884–85).

¹²⁷ X 5.18.3, *Si quis* (CIC 2:810).

¹²⁸ Gratian, *Decretum* C. 2 q. 5 c. 20, *Consuluisti* (CIC 1:462–63); X 5.10.3, Lucius III, *De infantibus* (CIC 2:793). Part of Burgh’s language comes from the Gloss to *De infantibus*, which he also cites (CJC 2:1693–94).

¹²⁹ Gratian, *Decretum* C. 24 q. 1 c. 41, *Si quis dederit* (CIC 1:983).

¹³⁰ X 5.12.2, *Interfecisti*, and 5.38.2, *Qui presbyterum* (CIC 2:793–94, 884).

¹³¹ X 5.37.6, *Tue discretionis* (CIC 2:881).

¹³² Gratian, *Decretum* D. 74 c. 1, *Episcopus* (CIC 1:262) (mistakenly cited by Burgh as D. 73 c. 2).

¹³³ *Sext* 5.9.5, *Felicitis recordationis* (CIC 2:1091–92).

¹³⁴ *Clem.* 5.8.1, *Si quis suadente* (CIC 2:1187–88).

cited for punishment of those who strike, seize, or expel a bishop: they are to be anathematized and all their goods given to the Church, or if they do this to a cleric inferior to a bishop, they are to be deposed (13 §bb).¹³⁵ Then, from the midst of various other canons in the same question dealing with similar things, Burgh cites two consecutive canons for punishments for killing clerics: one specifies fines of 300 *solidi* for a subdeacon, 400 for a deacon, 600 for a priest, 900 for a bishop, and 400 for a monk, and the other stipulates that anyone who kills a monk or a cleric must give up his arms and spend the rest of his days in a monastery, and do seven years of public penance.¹³⁶ Finally, Burgh cites a provision of the Fourth Lateran Council of 1215 providing for punishments of prominent laymen for killing clerics.¹³⁷ Nevertheless, Burgh concludes, referring to his treatment above (13 §M), the penances to be imposed on the killers and their accomplices will be arbitrary, in keeping with the nature of the crime (13 §bb). In other words, these “statutory” penances are not binding.

The *Liber Extra* and the gloss to Gratian are cited for the penalty against excommunicates who fail to seek absolution from their excommunication within a year (13 §bc). Gratian is invoked for the penalties for saying a home Mass without the bishop’s permission (13 §bd), for the punishment of an ex-priest saying Mass (13 §be), and the penalties for burning a church (13 §bf). The *Liber Extra* and the *Sext* are cited against those who issue unjust excommunications (13 §bg), and the English legatine constitution of Cardinal Ottoboni against religious superiors for delaying the taking of vows, and Cardinal Otto’s constitution and one of the Reading constitutions of Archbishop Peckham against archdeacons failing to publicize the constitution against concubinage¹³⁸ (13 §bh).

¹³⁵ Gratian, *Decretum* C. 17 q. 4 c. 22; *Si quis deinceps* (CIC 1:820–21).

¹³⁶ Gratian, *Decretum* C. 17 q. 4 cc. 27–28; *Qui subdiaconum* and *Qui occiderit monachum* (CIC 1:822).

¹³⁷ X 5.37.12, *In quibusdam* (CIC 2:883–84); Lateran IV, can 45 (Tanner, *Decrees of the Ecumenical Councils* 1:254).

¹³⁸ See Lyndwood, *Provinciale*, which also contains, as noted above (n. 3), a supplement with the constitutions of Cardinals Otto and Ottobono and the annotations of John Acton (writing into the 1340s). For Peckham’s constitution, *Quia incontinentie vitium*, see AppProv, p. 24, and for Lyndwood’s treatment, see *Provinciale* 1.2.1 (book 1, title 2, ch. 1), pp. 10–16; and see the supplement, pp. 41–46, for Otto’s constitution *Licet ad profugandum*.

Burgh then refers to the penalties he has treated earlier (in Part 4, 6 §L), for priests who spill the consecrated wine, but he notes in the present chapter (Part 5, 13) that, according to some authorities, these penances are only stated *ad cautelam* in order to discourage negligence, and the actual penances imposed can be left up to the judgement of the confessors. However, Burgh concludes, it would be safer to fulfil the prescribed penance (13 §bi). He refers again to Part 4 on the Eucharist for penances prescribed for those who vomit the Eucharist because of drunkenness or gluttony (and he says what to do with the vomit) and for failure to guard the Eucharist properly. When fasting is prescribed, one can fast by limiting oneself to the seven foods allowed during Lent, unless a stricter diet is specified (13 §bk).

Burgh concludes by saying that these penances stipulated by canon can be mercifully moderated or reduced, or increased, by the discreet confessor according to the principles stated above, 11 §§E–G. In conclusion, if penitents can reasonably fulfil these statutory penances, they should do so (13 §bl).

Chapter 14: Absolution. “Generally in the forum of sacramental confession the penance is first enjoined and then the absolution is given in these words: ‘By the authority of God the Father Almighty and the apostles Peter and Paul and my own office, committed to me for this purpose, I absolve you for these contrite sins and from others which you do not remember.’” Burgh adds, however, that according to Cardinal Ottoboni’s constitution *Quoniam ceca*, the formula is: “By the authority which I exercise I absolve you of your sins for which you are contrite and which you have confessed to me; and may the Lord absolve you in the name of the Father, etc.”¹³⁹ The prayer *Misereatur tui* should be said first, lest perchance the effect of the sacrament be impeded on the part of the penitent; and, after the absolution, it is fitting to say the *In nomine Patris*, etc., to indicate that the priest does not absolve by his own

¹³⁹ *Ego auctoritate qua fungor absolvo te a peccatis tuis de quibus es contritus et mihi confessus; et Dominus absolvat te in nomine Patris, etc.* The constitution as given in the edition accompanying Lyndwood’s *Provinciale* with Acton’s gloss specifies only these words: “Ego te a peccatis tuis auctoritate qua fungor absolvo” (p. 82) [I absolve you from your sins by the authority I exercise]. Acton explains “a peccatis” thus: “Scilicet istis mihi per te jam confessis, et ab aliis de quibus non recorderis, Dei Patris omnipotentis et apostolorum Petri et Pauli ac officii mihi commissi te absolvo” [I absolve you [by the authority] of God the Father Almighty and the Apostles Peter and Paul and the office committed to me [from] those sins already confessed to me by you and from others which you do not remember].

authority but rather as a minister; but this is left to the judgement of the priest. Imposition of hand is not required at the absolution, since this sacrament is not ordained to impart some excellence of grace but to remit guilt; for this reason, the Sign of the Cross is more appropriate, since the Cross was the instrument of our redemption, according to Aquinas, who says that the words “Ego absolvo te” are the required form of absolution (14 §A).

He then gives the formula for absolution from minor excommunication and restoration to the sacraments, using a singular rather than plural verb (*absolvo* rather than *absolvimus*), as the theologians specify, though Hostiensis says differently (14 §B).¹⁴⁰ For absolution from major excommunication, four things are to be observed: first, an oath to conform to the commandments of the Church, though this is not required for validity. Even women should swear such an oath, but it is up to the confessor whether children should do so. Second, when the excommunication is for a notorious offense, amends should be made first, but when the offense is occult or when it is for contumacy (contempt of court), a sworn caution suffices, if no expenses are sought or satisfaction for injury (we are obviously in the realm of the external forum now). If a defendant does not make satisfaction even though able to do so and is nevertheless absolved, the absolution holds good, but the absolver sins, according to William of Rennes. The third point is that the absolution must be given by the one who passed the sentence, or by his superior or a delegate, and the penitent should be reconciled by his priest; for, even though the priest cannot excommunicate or absolve from major excommunication, he is the minister of the solemn reconciliation and ecclesiastical satisfaction, according to the decretal *Quoniam* of Gregory VIII (1187).¹⁴¹ The fourth point is that the absolver must make reasonable demands, for otherwise the excommunicate can legitimately appeal the sentence, citing John of Freiburg (14 §§C, D).

¹⁴⁰ Hostiensis, *Summa*, book 5, title [59], *De sententia excommunicationis*, no. 14 (col. 1918), says that the priest is to use the following words, or their equivalent: “Absolvimus te a vinculo excommunicationis hujus quam confessus es, et ab alia, si teneris, in quantum possumus et debemus, [et] restituimus te ecclesiasticis sacramentis.” That is, “We absolve you from the bond of excommunication that you have confessed and from any other that you may be bound by, insofar as we can and should, and we restore you to the sacraments of the Church.”

¹⁴¹ X 3.1.9, *Quoniam* (CIC 2:450–51). The decretal does not seem apropos, since it only allows a bishop to absolve a cleric under his rule who has struck another such cleric.

But before stating the fourth point, Burgh says that the accustomed way of absolving a major excommunicate is to have him strip off his clothes and kneel before the church door, while the absolver says the *Miserere*, striking him with his staff one blow at every verse, lightly or strongly depending on the nature of the offense, with various other prayers. But then he admits that much of what he puts here is not of the essence of the absolution; he only records it for the instruction of simple priests (14 §D).

Burgh refers to excommunications decreed by archdeacons and *plebani*, which in England would be rural deans, citing the decretal *Cum ab ecclesiarum*,¹⁴² but without entering into the actual practice in England (14 §O).

There are two kinds of absolution from excommunication, one pertaining to the external forum, which can be granted even by someone not a priest; the other pertains to the internal forum, which only a priest can grant (14 §ac). When a non-priest is excommunicator and absolver, he should send the absolvee to a priest for sacramental absolution (14 §K, no. 7), in order to remit any sin that is connected with the excommunication. When the priest absolves any sin, he not only declares the penitent to be free of the sin but also dismisses some of the punishment due for the sin, according as the penitent is more or less disposed to this through true contrition (14 §ag).

The last sections of Burgh's chapter 14 deal with cases of regular clergy physically attacking other regulars or seculars, and the jurisdiction of absolving them from excommunication (14 §§ai,ak). Finally, a regular (member of a religious order) who is licenced by the bishop to hear confessions in his diocese is excommunicated if he absolves from excommunications or sins beyond his powers (§al),¹⁴³ whereas a priest (viz., a secular priest) who does this is said to commit a mortal sin, with no word of excommunication (14 §ah).

Chapter 15: Reserved Sins. Burgh begins by saying that the opinions of the doctors vary on this subject. He notes the declaration of cases reserved to the bishop in the decretal *Inter cunctas* of Benedict XI (1303–04), which was not affected when the decretal was repealed by Clement V's *Dudum* (15 §A).¹⁴⁴ After giving the opinions of Peñafort,

¹⁴² See X 1.31.3, *Cum ab ecclesiarum* (CIC 2:187).

¹⁴³ He says that this subject is also treated in chs 5, 15, and 16.

¹⁴⁴ *Extravagantes communes*, 5.7.1; *Inter cunctas* (CIC 2:1296–99); *Const. clem.* 3.7.2; *Dudum* (CIC 2:1161–64).

Hostiensis, Durandus, and John Andrew (15 §B–C),¹⁴⁵ he notes some cases reserved by the provincial constitutions of Canterbury: murder in the constitution *Preterea cum juxta* of Archbishop Peckham, 1281;¹⁴⁶ refusal to pay tithes in the “Merton” constitution *Quoniam propter diversas*;¹⁴⁷ and other crimes listed in “a certain constitution of Stephen, Archbishop of Canterbury,”¹⁴⁸ namely, public usurers, burners of houses, false witnesses, perjurers for gain or injury, sorcerers, fortune-tellers, counterfeiterers, clippers of coins, impederers of reasonable testaments, and of those who fall into categories stipulated by canon law, like strikers of clerics, traitors, heretics, simoniacs, and those responsible for supposititious births that result in disinheritance; also, those who smother a child through negligence, or who abort a conceived and animated fetus through potions, because of the enormity of the crime, even though it be secret; likewise, those whose children through their negligence fall into fire or water, and those who violently attack their father or mother; bestiality on the part of a man or woman; those who betray their lord and cause his death; sacrilege, fornicating in church or churchyard, stealing sacred things from a church; finally, public adultery and manifest violation of faith (15 §D–F).

Chapter 16: Exceptions. Only a “general penitentiary” licenced by the bishop can absolve sins reserved to the bishop, but there can be limits upon the power of such confessors; namely, reserved sins that the bishop does not include in his licence (16 §A). Furthermore, penitentiaries are not able to absolve from excommunications/suspensions issued by parish priests, or from other sources [*sive ex aliis*], for theft and damages caused by unknown perpetrators, since such pertain not only to the penitential forum but also to some extent to the external forum, and there should be no absolution until the person who sought the excommunication is satisfied. But if the excommunicated person is prepared to make satisfaction, he should be absolved by the bishop or the priest who excommunicated him, even in secret, if he requests

¹⁴⁵ He notes John Andrew’s inclusion of clandestine marriage, in his Ordinary Gloss to *Sext* 5.10.2, *CJC* 3:1:702.

¹⁴⁶ See Lyndwood, *Provinciale*, 5.16.12, pp. 339–40; *AppProv*, p. 28.

¹⁴⁷ Lyndwood, *Provinciale*, *AppProv*, p. 34. According to Cheney, “William Lyndwood’s *Provinciale*,” p. 168, the ascription to Archbishop Robert Winchelsey at Merton in 1305 is wrong, and few of the texts gathered under this rubric are provincial legislation.

¹⁴⁸ Lyndwood, *Provinciale*, *AppProv*, p. 10; this and other constitutions given here were fabricated as provincial legislation from the synodal statutes of Richard Poore, bishop of Salisbury from 1217 to 1228 (Cheney, “William Lyndwood’s *Provinciale*,” p. 167).

it, Burgh believes, and even against the wishes of the injured party. If the injured party insists on the renewal of the excommunication, he is to be put off with equivocation, but short of telling a lie (citing William of Rennes glossing Raymond) (16 §B). Penitentiaries cannot absolve those excommunicated in court (16 §C) and cannot commute vows without checking with the bishop (16 §D).

Chapter 17: Serious Injuries to Clerics. Those who do grievous injury to a cleric are excommunicated and should not be absolved by any but the pope or cardinal legates *a latere* (with special powers). “Today” (that is, a hundred years before Burgh, since he is citing Hostiensis) it is left up to the bishop to decide what is grievous (17 §A, C). If the injury is done by a judge or summoner in the course of his office, and not deliberately, it is not imputed to him. Burgh then discusses those who fight against armed clerics, and laymen who arrest clerics (17 §H). When women, no matter whether they are strong or weak, strike clerics, they are absolved outside of the Holy See, following Alexander III’s decretal *Mulieres* (which speaks of the difficulty such persons would have of traveling to the pope).¹⁴⁹ But William of Rennes says, “I believe such a woman should be sent to the Holy See if she is strong and her offense of great atrocity, and if sending her would not injure anyone else.” Women who burn churches or forge papal letters are not exempt from being sent to the pope. William thinks that the reason is that such crimes are premeditated, unlike striking a cleric (17 §K). It should go without saying, but it is said anyway, that nuns who are excommunicated for striking a cleric or a religious can be absolved by the bishop (17 §Q). Those who hit clerics without great injury can be absolved by their own bishops. He ends by saying that in all the aforesaid cases, according to Bernard’s Ordinary Gloss on the decretal *Nuper*, all of these excommunicates should be absolved by their bishop, or, if he is unavailable, by their own priest (17 §R).¹⁵⁰

Chapter 18: Cases in which Striking a Cleric does Not Result in Excommunication. On §§A–G of this chapter, see above, pp. 249–50.

With regard to striking clerics, senior clerics can discipline younger clerics under them, as can schoolmasters, and the headmaster cannot take away from his subordinates the “benefit of law” granted to teachers,

¹⁴⁹ X 5.39.6, *Mulieres* (CIC 2:891).

¹⁵⁰ Gloss to X 5.39.29, *Nuper* (C7C 1897–98).

of being able to beat students moderately (18 §J). No excommunication is incurred for hitting a cleric in minor orders who is in transit to a state contrary to being a cleric, such as becoming a knight [*miles*] or a “bigamist” (18 §K). (An example of the latter case would be the Wife of Bath’s fifth husband, the cleric Jankin, since marrying a widow constituted technical bigamy.) One can forcibly eject an unwelcome cleric from one’s home (as we see happening in Chaucer’s *The Summoner’s Tale*), without fear of excommunication (18 §L). The same is true of violently recovering one’s goods from a clerical burglar caught in the act, but not if he is caught after an interval, according to William of Rennes (18 §N). There is no excommunication for threatening or pursuing a cleric, even if he falls and hurts himself, unless he is forced to jump into a lake or the like (18 §O). In the view of Innocent IV, no excommunication is incurred for snatching a belt or garment that a cleric is wearing (18 §P). According to a decretal in the *Sext*,¹⁵¹ if someone attacks or beats a cleric on your behalf, without your authorization, you incur no excommunication (18 §T). This would seem to have been the case a century earlier with Henry II and the murder of Archbishop Thomas Becket; but Burgh adds the opinion of William that the censure is indeed incurred if one provokes others to such deeds by words or actions (18 §U).

Chapter 19: Excommunicates Reserved to the Pope. Excommunicated persons who can only be absolved by the pope, apart from those who strike clerics and religious, are forgers of papal letters and those who use them knowingly or out of culpable ignorance (19 §B), those who burn or damage churches (19 §C), and infringers of specific decretals in the *Sext* (19 §E–H) or two extravagants of Boniface VIII—though one of them, Burgh says (namely, *Excommunicamus*), is said by some authorities to have been repealed (19 §J–K)¹⁵²—and various Clementine constitutions. One of the latter is *Religiosi*, which prohibits religious from administering the sacraments of the Eucharist, matrimony, and extreme unction to clergy or laity without permission of the proper priests of the individuals involved and prohibits absolving anyone from excommunication or absolving anyone *a pena et a culpa* (19 §M).¹⁵³

¹⁵¹ *Sext* 5.11.23, *Cum quis* (CIC 2:1105).

¹⁵² *Extravagantes communes* 5.10.1, *Excommunicamus* (CIC 2:1309–10); *Extravagantes communes* 3.6.1, *Detestande* (CIC 2:1272–73).

¹⁵³ *Clem.* 5.7.1, *Religiosi* (CIC 2:1186–87). On this last point, see above, pp. 352–53.

Taking on a plurality of curacies without due dispensation entails excommunication in virtue of the Canterbury constitutions of Archbishop Peckham at Reading, 1279 (19 §R).¹⁵⁴ An extravagant of Clement V's prohibits giving supplies to the Saracens (19 §S). Finally, Burgh cites a bull of Pope Alexander (IV) prohibiting Franciscans from receiving Dominicans into their order and vice versa, and so on, with no further identification of the letter. He concludes by saying that these are all the cases he can find of reservations to the pope (19 §T).

Chapter 20: Excommunicates Absolvable by the Bishop.

Among such are priests or religious who take courses in Roman civil law or medicine (20 §G), and priests who act as sheriffs or secular provosts (20 §O). Pirates are also automatically excommunicated, according to Hostiensis, *pace* Bernard (20 §Q). Not only hitting clerics but also spitting on them, pouring water or oil on them, tearing their clothes, and the like, brings on excommunication, according to Hostiensis, Raymond, and Innocent (20 §S). But Richard says that no excommunication occurs where there is no mortal sin, since the laws command that excommunication not be inflicted except because of a mortal sin (here there seems to be a mix-up of the internal and external forum); therefore, it only takes effect when the perpetrator acts with sufficient deliberation (20 §T).

There follow instances of cases of excommunication imposed according to the prescriptions of the *Sext* and *Clementines*. The *Sext*, for instance, excommunicates anyone faking a case requiring a judge to go to a cloistered woman for testimony¹⁵⁵ (20 §ab), or hiring assassins (20 §am).¹⁵⁶ Renting a house to a foreigner for public usury results in excommunication for a churchman below bishop and interdict for a college or university; if a layman does this, ecclesiastical censures are to be applied (20 §an).¹⁵⁷ A Clementine excommunicates Beguines and any religious who support them (20 §az),¹⁵⁸ and those who consciously contract marriage within the prohibited degrees, or with a nun, or with a male religious or a cleric in major orders (20 §bb).¹⁵⁹ He ends by adduc-

¹⁵⁴ Lyndwood, *Provinciale*, AppProv, pp. 22–23; Burgh identifies the paragraph as *Huic quoque*, but it is actually *Huic igitur*. Lyndwood incorporates most of it at the end of 3.5.2, *Audistis*, beginning, “Decernimus etiam, et perpetua stabilitate,” pp. 136–37.

¹⁵⁵ *Sext* 2.1.2, *Mulieres* (CIC 2:995).

¹⁵⁶ *Sext* 5.4.1, *Pro humani* (CIC 2:1080).

¹⁵⁷ *Sext* 5.5.1, *Usurarum* (CIC 2:1081).

¹⁵⁸ *Clem.* 3.11.1, *Cum de quibusdam* (CIC 2:1169).

¹⁵⁹ *Clem.* 4.1.1, *Eos qui* (CIC 2:1177–78).

ing an extravagant against persons who impugn a pope's powers before his coronation (20 §bk),¹⁶⁰ the Fourth Lateran censure against usurers (exclusion from the Church, refusal of offerings, denial of burial)¹⁶¹ (20 §bl), and two disputed cases: Richard and others say sorcerers are *excommunicati*, whereas Gratian, Raymond, Hostiensis, and Goffred say they are *excommunicandi*—that is, the censure is not automatic but must be imposed by a judge. Similarly, Richard says that the imposers of new tolls on merchants and pilgrims are excommunicated, but the other four authorities say that they “should be deprived of communion” (that is, excommunicated by a judge) (20 §bm).

Chapter 21: Excommunications Required by Legatine and Provincial Constitutions. Burgh provides a notable list of excommunicated malefactors (robbers, arsonists, sorcerers, counterfeiters, etc.) named by Archbishop Stephen Langton at the Council of Oxford, 1222 (21 §§E–L).¹⁶² Burgh then names the constitutions of Exeter, chapter 1, against usurers and simoniacs (§L), but it is unclear what he is referring to.¹⁶³ Among other constitutions named are: Archbishop Peckham's against the violators of nuns (1281); that of Archbishop Boniface against those who impede the last wills and testaments of women, both single and married, whether of their own wives or those of others (1261—reiterated by Archbishop Stratford in 1343) (§O);¹⁶⁴ Archbishop Metham's in 1329 against those who would restrict the offerings of the faithful on the occasion of weddings, purifications of mothers, and burials (§Q);¹⁶⁵ and Archbishop Stratford's decree of 1343 insisting on the traditional practice of “signification” mentioned by Chaucer, by which a prelate obtains a royal writ for the arrest and incarceration of an excommunicated person (§ai).¹⁶⁶ A companion constitution excommunicates

¹⁶⁰ *Extrav. comm.*, 5.10.4, *Quia nonnulli* (CIC 2:1312), by Clement V (Burgh says Benedict XI).

¹⁶¹ *X* 5.19.3, *Quia in omnibus* (CIC 2:812).

¹⁶² Lyndwood, *Provinciale*, 5.17.1, *Auctoritate*, pp. 345–48; *AppProv*, p. 1.

¹⁶³ He is not referring to the synodal statutes of Bishop Quisnel or Quinel in 1287; see *Councils and Synods*, ed. Powicke and Cheney, 2:982–1059.

¹⁶⁴ Peckham on nuns: Lyndwood, *Provinciale*, 5.15.6, *Tantum*, pp. 322–23; *AppProv*, p. 31. Boniface on wills of women: *AppProv*, p. 20 (*Item statuimus ne quis*); Stratford: Lyndwood, *Provinciale*, 3.13.15, *Statutum*, pp. 172–74; *AppProv*, pp. 45–46.

¹⁶⁵ Lyndwood, *Provinciale* 3.16.1, *Quia quidam*, pp. 185–87; *AppProv*, p. 42.

¹⁶⁶ Lyndwood, *Provinciale* 3.28.5, *Seculi principes*, pp. 264–66; *AppProv*, p. 48; see Chaucer, General Prologue description of the Summoner, line 662.

destroyers of trees and other vegetation in churchyards (§ak).¹⁶⁷ Another orders the same for violators of sequestrations made by ecclesiastical officials¹⁶⁸ (§al), while the next one, *Dierum invalescens*, excommunicates persons who maliciously prosecute their enemies by royal writ and get them outlawed in courts where they are not known and are unaware of the actions against them (§am).¹⁶⁹

Finally, Burgh cites a constitution,¹⁷⁰ thought to be by Archbishop Islip, excommunicating nuns who are away from their monasteries without leave (21 §an); and another constitution, this one by Archbishop Sudbury, edited in the Gloss of William of Chester, prohibiting stipends of more than seven marks a year for saying *annualia* of the dead; but according to some, Burgh adds, this constitution was repealed (§ao).¹⁷¹ Sudbury was murdered in the riots of the summer of 1381 a year after the date of one of the copies of Burgh's work (the other is dated 1385); so that any such repeal must have been very recent.

Chapter 22: Excommunication for Violations of the *Magna Carta* and the *Carta de Foresta*. Burgh says that such excommunication was decreed by Boniface of Savoy (archbishop of Canterbury from 1243 to 1270) and five of his suffragan bishops on 5 May 1254 (actually, 1253).¹⁷² This sentence, Burgh adds, was several times confirmed, "as it is said," by the Apostolic See (22 §A).¹⁷³ Burgh briefly gives the 33 articles of the *Magna Carta* (called *Carta Communis Libertatum Regni* in the decree) and the 15 articles of the *Carta de Foresta*. He ends by saying that no one who hears confessions within the province of Canterbury should be ignorant of them.

A confessor strictly following Burgh's instructions would presumably consider a penitent excommunicated for violating the *Magna Carta* article

¹⁶⁷ Lyndwood, *Provinciale*, 3.28.6, *Quia divinis*, pp. 267–69; *AppProv*, p. 48.

¹⁶⁸ Lyndwood, *Provinciale*, 2.4.1, *Frequens*, pp. 104–06; *AppProv*, pp. 48–49.

¹⁶⁹ Lyndwood, *Provinciale*, 2.2.3, *Dierum invalescens*, pp. 97–98; *AppProv*, p. 49.

¹⁷⁰ The constitution begins, "Sic ad hoc effrenis," or perhaps just "Effrenis."

¹⁷¹ Such a constitution issued by Sudbury, beginning *Statuimus* and dated 26 November 1378, is given in *AppProv*, p. 59 (col. a). I have not identified William of Chester.

¹⁷² Burgh's text accords with that recorded by Rymer, given in *Councils and Synods*, 2:477–78, *inc.* "Auctoritate Dei Patris"; *expl.* "qui pacis regis et regni nostri presumpturint perturbare."

¹⁷³ See Lyndwood, *Provinciale*, 5.15.1, *Eterne sanctio*, pp. 314–18, esp. p. 315, n. z; he gives the regnal year of Henry III in 1253 as 40 rather than the correct 37. Lyndwood does not collect this decree, but he refers to it as he found it in the *Flores historiarum* for 1253; he accepts it as authentic, commenting on a constitution of Boniface (*Eterne sanctio*, May 1261), which refers the penalty of excommunication for violating "the charters of the lord king granted to the Church."

requiring a standard measure for wine in England (22 §Y) or for failing to hamble one's dog in the royal forest, as provided in the fourth article of the Forest Charter (22 §am). As a matter of fact, the decree of Boniface and the other bishops ends by excommunicating anyone "who dares to disturb the king's peace." But Burgh does not make a point of this impossibly broad provision.

Chapter 23: Communicating with Excommunicates; Minor Excommunication. Anyone who helps or counsels someone in the crime for which he was excommunicated falls under the same excommunication. But people who greet or kiss him and associate in other ways with him are not excommunicated unless they persist after a threefold formal warning (23 §A). One does not "catch" excommunication, even if one helps an excommunicate commit a "mortal crime." Doing so, however, is a mortal sin, and it brings with it minor excommunication (23 §B). Administering the sacraments to an excommunicate is a mortal sin and can make a priest irregular; John Andrew and Archdeacon have different views. Burgh discusses how much fear excuses a priest, and ends citing William of Rennes and Huguccio to the effect that "fear enough to affect a constant man" is a sufficient excuse (23 §C). As for consorting with an excommunicate in ways not involving a crime, the more probable opinion is that it is not a mortal sin, citing Aquinas, Alan of Lille, and Peter of Tarentaise (23 §D).

Burgh goes on to discuss circumstances that allow persons to deal with excommunicates, for instance, when attending to their salvation, or because they are members of their family, and so on (23 §§E–G). If someone is held to be excommunicated by *publica fama* or by notoriety, you are bound to avoid him, at least until you investigate and discover the truth (23 §O). If I hear in London that a person is excommunicated but encounter him in York, where nothing is known of this, I am not bound to avoid him (23 §P). One can also act on presumptions based on a person's character as to whether he is still excommunicated (23 §Q). Everything in this chapter from §A to §aa, Burgh says, is based on the *Summa confessorum*.¹⁷⁴

Burgh then lists five cases in which an excommunication is null and void: if the judge who decreed it did not have jurisdiction; if it is decreed after a lawful appeal; if it is unbearable; if it is directed at

¹⁷⁴ Burgh cites Freiburg's *Summa confessorum* book 3, title 33, 6, q. 96. In the 1518 edition, the subject of participation with excommunicates begins with q. 122 of 3.33 (fol. 171).

persons associating with an excommunicate without a threefold warning; and if a prelate forbids his subjects from communicating with his superiors under pain of excommunication (23 §ab).

As for minor excommunication, it can be automatically incurred, sometimes only in the eyes of God [*quoad Deum*], by committing any mortal sin, which cuts one off from the sacraments, and in the eyes of the Church. He first says it can be done in four ways, and then “in many cases” (23 §ac). He proceeds to list nine ways of publicly incurring minor excommunication: 1) dealing with excommunicates (23 §ad); 2) committing sacrilege, by mixing sacred with profane (23 §ae); 3) being a notorious fornicator, citing a decretal from the *Liber Extra* (which however deals only with priests) (23 §af);¹⁷⁵ 4) being guilty of simony (a strangely lenient result, since simony, like heresy, was an exempt crime, against which even criminals could testify) (23 §af);¹⁷⁶ 5) receiving a church from a layman without the bishop’s leave, though some authorities say the excommunication is not automatic, but potential (§ag); 6) using ballistas or archery against Christians in an unjust war, though Bernard and others have a different opinion (23 §ah); 7) being oppressors of the poor, notorious pillagers, usurers, or prostitutes; these are broadly said to be excommunicated, in that their offerings are not received at the altar (23 §ai); 8) acting so as to be denied an ecclesiastical burial—for instance, one who dies in a tournament, even though he repented, and also, it seems, anyone who did not confess once a year; and 9) being any kind of notorious sinner. One’s own priest can absolve in all of these cases (23 §ak).

Minor excommunication can be inflicted by lower judges as well as by the bishop (23 §al). It is a mortal sin to participate in or confer sacraments when under minor excommunication, but the conferred sacraments are valid. Entering the church is not a sin,¹⁷⁷ and the hours can be recited, but the kiss of peace should not be received (23 §am). A benefice can be conferred upon such an excommunicate, unless it is elective. Minor excommunicates profit by the prayers of the Church,

¹⁷⁵ X 3.2.7, *Vestra* (CIC 2:455–56).

¹⁷⁶ Burgh cites the old decretal *Tanta*, X 5.3.7 (CIC 2:750), which says that anyone, even a prostitute, is allowed to accuse a culprit of simony. It includes, however, an odd statement that every sinner but a simoniac can sing Mass, which is presumably the inspiration for Burgh’s inclusion of simony here. The Ordinary Gloss has a long comment attempting to explain the statement away in various ways (C7C 2:1607–08).

¹⁷⁷ On the distinction between minor excommunication and the prohibition from entering the church, see Kelly, “Bishop, Prioress, and Bawd,” p. 374.

unless they are in mortal sin, and so do major excommunicates unjustly excommunicated, or, even if justly excommunicated, if they repent and seek absolution, being prepared to do all that is required of them, according to Richard (23 §an). Richard is also cited on the do's and don'ts of dealing with excommunicates after death (23 §ao).

Chapter 24: Withholding Absolution until Satisfaction is Performed. This applies to those who have struck a cleric, religious, or *conversus* (24 §A); pirates (24 §B); sellers of arms to Saracens, referring to 19 §S above (meaning 20 §P) (24 §C); those who obtain false papal letters (24 §D); and unjust taxers of churches (24 §E). A bishop or anyone making a formal visitation who receives a gift from the church must make a twofold repayment before absolution can be granted (24 §F). Other offenders treated earlier are then listed, including receivers of heretics (24 §J). Various conditions for usurers are stipulated before they can be absolved (24 §L). Other such offenders are those who conduct wrongful burials in time of interdict or who bury excommunicates (24 §O), referring to treatment above (20 §at), where Burgh notes that the satisfaction to be performed is at the judgement of the bishop.¹⁷⁸ Other sinners who must make satisfaction before being absolved are heresy inquisitors below the rank of bishop who prosecute cases unjustly (as in 19 §L) (24 §Q);¹⁷⁹ those who take supplies from granges belonging to prelates (24 §S); and those who violently remove persons who flee to churches (24 §T).¹⁸⁰ He also names clerics with unauthorized plural benefices, condemned in the Reading constitutions, as above (19 §R, repeated in 21 §M) (24 §X). Finally, he cites the constitution of Cardinal Ottobono suspending any priest who accepts and exercises secular jurisdiction as a judge (24 §Y).¹⁸¹

Chapter 25: Vows. Most of this chapter deals with the doctrine of vows made by different classes of people, without going much into their direct relevance for confession.

For instance, Burgh notes that if one spouse makes a simple vow of continence with the other's permission, the non-vowing spouse can still exact the marital debt; but if both vow, and the husband (say) wishes to break his vow, the wife is not bound to obey but can persevere in her

¹⁷⁸ Citing *Clem.* 3.7.1, *Eos qui* (CIC 2:1161).

¹⁷⁹ Citing *Clem.* 5.3.1, *Multorum* (CIC 2:1181–82).

¹⁸⁰ Both of the last two cases are referred to 21 §C, but only the first is treated there.

¹⁸¹ Ottobono, *Cum honestatis*, Supplement to Lyndwood, *Provinciale*, pp. 89–91.

vow, according to Raymond. When, on the contrary, both spouses make such a vow and one of them wishes to enter religion, he or she cannot do so without the further permission of the other spouse, according to Hostiensis and Bernard (25 §Y). It would be good for one's confessor be aware of the rules on these matters, in order to guide his penitents, and be able to say where sin lies. Thus, if one makes a simple vow of continence and then marries, one sins mortally in so doing but nevertheless the marriage holds (25 §ag).

Chapter 26: Oaths. This chapter similarly deals with the doctrinal and moral implications of oaths, without much attention to their connection to penance and confession. Violating an oath sworn in God's name is more culpable than breaking oaths invoking creatures (26 §C). Oaths differ from vows in this, that whereas a vow is a promise made to God, an oath is a promise or statement made to someone else but invoking God (or saints, etc.) as witness or guarantor (see 26 §al).

Here is an example of a connection to confession. Say that a woman who has committed adultery admits it in confession and is absolved. If she is then publicly accused of adultery, can she swear to her husband that she is not guilty? No, because she cannot be certain that her guilt has been actually forgiven (26 §M). Burgh here refers to William and Hostiensis on the decretal *Accepimus* of Innocent III, which prohibits one from swearing that one is innocent of a crime on grounds that guilt has been dismissed by penitence.¹⁸²

Generally speaking, if you swear to do something, you are obliged to do it, unless it would result in something wrong, for instance, swearing to do something bad in itself, such as killing a person unjustly or committing adultery; and in such a case, one sins both in swearing it and in fulfilling it (26 §ak). This, of course, is elementary morality,

¹⁸² *Liber Extra* 5.34.16 (CIC 2:877). As reasons for not taking such an oath, the pope says: "since blessed Job says, 'Although I should be simple, even this my soul shall be ignorant of' [Job 9:21]; and Solomon: 'Who can say, "My heart is clean, I am pure from sin"?' [Prov 20:9]. Hence the Psalmist said, 'Who can understand sins? From my secret sins cleanse me, O Lord' [Ps 18:13], and the Apostle declares: 'I am not conscious in myself of anything, yet am I not hereby justified' [1 Cor 4:4]." But Raymond of Peñafort excised the last three citations when he included the decretal in the *Liber Extra*. Lyndwood 1.3.2 (p. 17 n. e) cites this decretal as justifying a general inquisition against a person without specifying charges, but the decretal itself deals with a case in which three specific offenses have in fact been charged.

which is ignored by Dorigen and Arveragus, not to mention Aurelius, in Chaucer's *The Franklin's Tale*.¹⁸³

A vow is more serious than an oath; breaking a vow entails infidelity as well as irreverence, according to Aquinas in question 89 (26 §al). The pope, of course, can dispense a person from fulfilling an oath, and Burgh believes that one's bishop can also do so, or commute it, as with vows (26 §am). Aquinas also says that the weightier the invoked "witnesses" (for instance, if one swears not only by God but also by the gospels and saints), the greater the obligation to fulfill the oath (26 §an).

Chapter 27: Perjury, Lying, and Scandal. Perjury is a lie confirmed by an oath (27 §A); as Aquinas notes, perjury is always a mortal sin, because it involves contempt of God, even if done jokingly; but less penance is due when it is induced by fear (27 §B). Burgh should be dealing here only with assertions made under oath, but he also treats the sinfulness of sworn promises that are not carried out (27 §§C–D). In swearing oaths out of levity and bad habit about something licit (for example, "By God, I'll go to church tomorrow"), one perjures oneself as soon as one swears, but this is to use the term perjury loosely for "bad swearing," which is not always a mortal sin (27 §D).¹⁸⁴

Aquinas (via John of Freiburg)¹⁸⁵ says that perjury is a greater sin than homicide, although homicide is punished by the Church as more damaging (27 §E). According to canon law, a reformed perjurer can testify in civil cases. The concealing of truth is also perjury (27 §G).

Lying is the telling of a falsehood with the intention of deceiving (27 §G). Augustine distinguishes eight kinds of lies, but Scotus's three

¹⁸³ In this tale, Dorigen, who is married to Arveragus, first takes an oath by God that she will never be an untrue wife, and then jokingly takes another oath to Aurelius, by God again, that she will "love him best of any man" if he can remove some worrisome rocks in the sea that might endanger Arveragus on his return home. When Aurelius hires an illusionist who makes the rocks disappear, Aurelius holds her to her oath, which she believes is binding. So does Arveragus, and he orders her to fulfil it, even though it would mean committing adultery (now it is suddenly assumed that she swore only to have a single sexual encounter with Aurelius). The plot is clearly very creaky. Chaucer took the story from Boccaccio's *Filocolo*, but when Boccaccio recycled the story in the *Decameron* (Day 10, tale 5), the husband, Gilberto, is not so gullible; he tells his wife to go through with it, but only as a last resort, and only because otherwise the disappointed "suitor" might order his hired magician to do them harm.

¹⁸⁴ Burgh is just copying John of Freiburg's *Summa confessorum* 1.9, *De Juramento et perjurio*, q. 21 (fol. 27v), where Gratian is similarly miscited—especially referring to the canon *Qui sacramento* (*Decretum* C. 22 q. 4 c. 11; *CIC* 1:878), the Gloss to which supposedly explains "pejerat" (= "perjurat") as "male et indiscrete jurat." However, the term does not appear in the canon or the Gloss (see *C7C* 1:1266).

¹⁸⁵ John of Freiburg, *Summa confessorum*, 1.9.23.

categories suffice: 1) pernicious lies harm the person lied against; 2) officious lies are useful without harming anyone (for instance, telling a thief that you do not know where the money is, or telling a killer that you do not know where his intended victim is); and 3) jocose lies are stories that everyone knows are untrue. Similar to the last are lies intended to deceive but doing no harm, as when Joseph in the Bible says that his brothers are explorers (Gen 42). Such lies are normally not mortal sins, unless causing scandal; see Scotus, *In 4 Sent.* 3.39 *de scandalo* (27 §J). It is not allowed to lie to save someone from danger, but dissimulation is all right, according to Augustine, as when Abraham said that Sarah was his sister (meaning brother's daughter). Jacob told Isaac that he was Esau, which he was mystically, because he should rightfully [*de jure*] have been the elder son, thus showing mystically that the Gentiles would be substituted for the Jews. Judith is commended not for her lie but for her desire to save her people, and so on (27 §K). Burgh also considers the case of the lying midwives of Exodus 1.15–21 (27 §L).

When an accused person is in court, being required by the judge to tell the pertinent truth according to the form of law, it is a mortal sin for him to make a lying denial or to be silent about the truth. But if the judge violates the *ordo juris*, the accused is not bound to reply, according to Aquinas, 2–2, question 86 (27 §N). The usual form of trial procedure, of course, is to make the accused take an oath to tell the truth.

Boasting about oneself can be a mortal sin, even by telling the truth, if it is against the glory of God [*dicendo aliquod quod supra se est secundum rei veritatem, si sit contra gloriam Dei*], or even if it is against charity towards one's neighbor, as with the Pharisee of Luke 18. Otherwise, boasting is a venial sin, unless it is done out of pride or vainglory, or in order to deceive someone for gain. Boasting about what others say about you is not a lie, but it could be sinful (27 §O). Irony, that is, saying something bad about yourself that is not true, is also a lie (27 §P), and sometimes boasting and irony are combined, as Aquinas shows in question 113 (27 §Q).

Scandal, according to the Gloss on Matthew 18, is the wrongful bringing of ruin to others (27 §R). It can be both active and passive. Active scandal *per se* is intentional, *per accidens* it is not, according to Aquinas, question 43 (27 §S). Scandal can be caused by malice, infirmity, or ignorance. Sometimes one has an obligation to perform works of supererogation (which by definition are not obligatory), if omitting them is likely to cause scandal. However, the Pharisees were scandalized out of malice, as Richard says in *In 4 Sent.* D.38 (27 §T). In other

words, when bad persons claim to be scandalized, no blame attaches to the alleged causer of the scandal.

Sometimes due punishment for sinners should be omitted because of the possibility of scandal—that is, when other sins are likely to follow, according to Aquinas (27 §U). One can never teach what is false in order to avoid scandal, but it can be advisable to omit teaching matters not necessary to salvation, or to forgo certain works of mercy when there is a danger of giving scandal. Brotherly correction can be omitted if the brother would be scandalized, as Aquinas notes (27 §X). Occasions of scandal should be removed by proper instruction. Sometimes the demanding of tithes or other church income should be put off, to avoid scandal (27 §Z). Aquinas explains when the eating of various foods should or should not be forgone to prevent scandal (27 §aa). Even though St Paul says that a good conscience is all that is needed (“Our glory is this, the testimony of our conscience,” 2 Cor 1:12), sometimes it is not enough, for everyone should be mindful of the needs of others, according to Raymond of Peñafort, *De scandalo et perjuria*, citing the canon *Inter verba* (27 §ab).¹⁸⁶

II. *Lyndwood on the Law of Penance*

Lyndwood arranges the English constitutions that he wishes to gloss in his *Provinciale* according to the titles of the five books of the *Liber Extra* (X). The section of the *Liber Extra* that most closely deals with penance is title 38 of Book 5, *De penitentiis et remissionibus* = X 5.38.¹⁸⁷ It contains 16 decretals, given in roughly chronological order, which I summarize as follows:

1. X 5.38.1, *Manifesta*, “Pope Alexander” [= Pseudo-Gregory]: For public sins public penance should be imposed.
2. X 5.38.2, *Qui presbyterum*, Council of Mainz,¹⁸⁸ A.D. 847: Penance for killing a priest.
3. X 5.38.3, *Significavit*, Alexander III: Penance for exceeding moderation in self-defence.

¹⁸⁶ Gratian, *Decretum* C. 11, q. 3, c. 55 (*CIC* 1:658–59).

¹⁸⁷ X 5.38 (*CIC* 2:884–89).

¹⁸⁸ The council is edited in MGH Conc. 3, *Concilia aevi Karolini* 843–859, ed. Wilfried Hartmann (Hannover, 1984), pp. 150–77.

4. *X* 5.38.4, *Quod autem*, Alexander III: Remissions must be granted by judges with jurisdiction.
5. *X* 5.38.5, *Quod quidam*, Alexander III: Confessions of penitents should be received even from those who say they cannot stop sinning.
6. *X* 5.38.6, *Licet*, Alexander III: In fasts on bread and water, other food can be substituted for bread when bread is lacking.
7. *X* 5.38.7, *Quesitum*, Clement III: Married Greek priests whose children die through negligence are to be secretly punished unless the fault is public knowledge.
8. *X* 5.38.8, *Deus qui*, Innocent III: Priests should give penance according to the circumstances of the faults.
9. *X* 5.38.9, *Officii*, Innocent III: A woman who procures a child through substitution or adultery and is not willing to tell her husband should not be denied penance.
10. *X* 5.38.10, *Nova*, Innocent III: An abbess cannot bless her nuns, hear their confessions, or preach publicly.
11. *X* 5.38.11, *Quod in te*, Innocent III: Allowances during interdict.
12. *X* 5.38.12, *Omnis utriusque*, Innocent III, Fourth Lateran, c. 21: Obligation of yearly confession.
13. *X* 5.38.13, *Cum infirmitas*, Innocent III, Fourth Lateran, c. 22: Medics should be concerned about the spiritual welfare of their patients.
14. *X* 5.38.14, *Cum ex eo*, Innocent III, Fourth Lateran, c. 62: Concerning indulgences and pardoners.
15. *X* 5.38.15, *Nostro postulasti*, Honorius III: Archbishops can grant indulgences in their provinces.
16. *X* 5.38.16, *Ne pro dilatione*, Gregory IX: Bishops and other superiors may choose their own confessors.

Raymond's *Summa de penitentia* (*SP*), first completed before he compiled the *Liber Extra* but then revised in light of it, deals with penance in Book 3, title 34, *De penitentiis et remissionibus*.¹⁸⁹ But instead of going chronologically by decrees, he proceeds systematically through 14 major subdivisions, as follows:¹⁹⁰

¹⁸⁹ Raymond of Peñafort, *Summa de penitentia*, cols 793–882.

¹⁹⁰ I supply the numbers in brackets to these subdivisions of Peñafort's *Summa de penitentia*, the rubrics of which are printed in small capitals by Ochoa and Diez in their edition. They divide the whole title into 73 numbered sections, summarized on cols 793–95.

1. *SP* 3.34.[1]. Penance (*penitentia*) explained (§§1–3).
2. *SP* 3.34.[2]. The degrees of the virtues (§4).
3. *SP* 3.34.[3]. The three actions of penance (§5).
4. *SP* 3.34.[4]. The three species of penance (§6).
5. *SP* 3.34.[5]. What is necessary for true penance (§7).
6. *SP* 3.34.[6]. Contrition (§§8–13).
7. *SP* 3.34.[7]. Confession (§§14–22).
8. *SP* 3.34.[8]. What is necessary for a true confession (§§23–29).
9. *SP* 3.34.[9]. Questioning the penitent (§§30–35).
10. *SP* 3.34.[10]. Satisfaction (§§36–40).
11. *SP* 3.34.[11]. Imposing satisfaction (§§41–60).
12. *SP* 3.34.[12]. Punishment for revealing confession (§§61–64).
13. *SP* 3.34.[13]. General remissions (§§65–68).
14. *SP* 3.34.[14]. Impediments to penance (§§69–73).

John of Freiburg's *Summa confessorum*, 1298, also has 14 sections to this title, *De penitentiis et remissionibus* (book 3, title 34, fols. 184–214v of the Lyons 1518 edition), all but the first indicated by rubrics, as follows:

1. *SC* 3.34.[1]. [Penance explained] (qq. [questions] 1–15).
2. *SC* 3.34.[2]. The parts of penance in general (qq. 16–29).
3. *SC* 3.34.[3]. Confession and absolution (qq. 30–90).
4. *SC* 3.34.[4]. Concealing confession (qq. 91–100).
5. *SC* 3.34.[5]. Satisfaction (qq. 101–110).
6. *SC* 3.34.[6]. Prayer (qq. 111–124).¹⁹¹
7. *SC* 3.34.[7]. Penances for specific sins (qq. c.125–48).¹⁹²
8. *SC* 3.34.[8]. Remission of venial sins (qq. 149–58).
9. *SC* 3.34.[9]. Deathbed penance (qq. 159–63).
10. *SC* 3.34.[10]. Prayers for the dead (qq. 164–70).
11. *SC* 3.34.[11]. The power of the keys (qq. 171–79).
12. *SC* 3.34.[12]. Indulgences (qq. 180–94).
13. *SC* 3.34.[13]. Impediments to penance (q. 195).
14. *SC* 3.34.[14]. Judging sins (qq. 196–289).

¹⁹¹ There is a rubric in the text, *De septem horis sive temporibus orandi* before q. 121, which is not cited in the table of contents.

¹⁹² The rubric for this section, *De quibus peccatis requiratur penitentia*, comes before q. 144, but presumably should come before q. 124 [= 125]; perhaps “cxxxiii” was misread as “clxiii.” In the edition I use (Lyons 1518), q. cxxxiii is followed by another q. cxxxiii (*lege* cxxxiii), followed by q. cxxxiii (*lege* cxxv). The next question is properly labeled cxxvi.

The *Liber Sextus* of 1298 has the same title, *De penitentiis et remissionibus*, in which there are three chapters:

1. *Sext* 5.10.1, *Romana*, Innocent IV (Council of Lyons): On pardoners and the indulgences granted by archbishops.
2. *Sext* 5.10.2, *Si episcopus*, Boniface III: Concerning permission to choose one's confessor.
3. *Sext* 5.10.3, *Indulgentie*, Boniface VIII: Concerning indulgences.

The pertinent title in the *Clementines* (Book 5, title 9, *De penitentiis et remissionibus*) has two decretals from the Council of Vienne (1311–12):

1. *Clem.* 5.9.1, *Cum secundum*, Clement V: Repudiates any custom refusing the sacrament of penance to those condemned to death.
2. *Clem.* 5.9.2, *Abusionibus*, Clement V: Enlarges the Fourth Lateran decretal on pardoners (see above: *X* 5.38.14, *Cum ex eo*).

In Lyndwood's *Provinciale*, the title *De penitentiis et remissionibus* is number 16 of Book 5, and includes 16 constitutions. For discussion of this material, see pp. 254–58 above.

- 1) Lyndwood 5.16 [1], *Quoniam nonnunquam* (pp. 326–27)

This constitution, from Archbishop Stephen Langton in the Council of Oxford, 1222, orders the appointment of prudent confessors in each archdeaconry to hear the confessions of the rural deans, parsons, and priests, to prevent any embarrassment in confessing to the bishop. Cathedral canons are to confess to the bishop or the dean or to a confessor appointed for the purpose. Lyndwood provides a treatise on good and bad shame (326 n. q) and lists eight characteristics of a good confessor: he should have a good memory of the past, be provident for the future, intelligent, rational, clever, docile, expert, and cautious; he adds that, above all, he should be a good man (326 n. z). He notes that the legatine legislation of Cardinal Otto Tonengo later in the 13th century required the bishop to appoint a general confessor in cathedrals (327 n. p).

- 2) Lyndwood 5.16.2, *Cum sacramentum* (pp. 327–28): *Archbishop Boniface of Savoy in the council of Lambeth, 1261*

No one, not even if incarcerated, is to be denied the sacrament of penance or time to confess. Lyndwood notes that there are three kinds of

confession: in the forum of the soul before God; in the penitential forum before God's vicar; and in the contentious forum before a judge (327 n. r). He repeats the rather cryptic discussion in John of Freiburg about the matter and form, substance and sign of penance (327 n. s, citing *Summa* 3.24.11 q. 179, fol. 204v, attributed there to Aquinas and Peter of Tarentaise, *In 4 Sent.* D. 22). We are saved through the Passion of Christ, working through the sacraments of baptism and penance. Mental confession to God is of natural law, but oral sacramental confession is of divine law, according to Peter, and Aquinas agrees. And according to Raymond, also noted by the Archdeacon,¹⁹³ contrition, confession, and satisfaction are commanded by Holy Scripture. That oral confession is necessary for salvation is clear from reason. For every creature shows and confesses its natural defects to man in whatever way it can, as the Gloss says to the line of Scripture, "Confessio et magnificentia opus ejus" (Ps. 110.3)." Hence, as Peter says, the Epistle of James lays down a precept: Confess to one another, if possible. If not possible, contrition of heart suffices, for deleting guilt, though not for obviating punishment; but contrition can be so strong that it deletes punishment as well, not *qua* contrition but *qua* penalty [hoc non erit ratione contritionis, sed ratione penalitatis], citing the Archdeacon¹⁹⁴ (328 n. a).

3) Lyndwood 5.16.3, *In confessione* (pp. 328–30)¹⁹⁵

This Pseudo-Edmund constitution deals with the proper attitude and actions of the confessor. Lyndwood divides it into six parts:

1. With regard to the penitent, the confessor is to keep his eyes averted, and patiently elicit a full confession, asking about ordinary sins (but only indirectly about sins out of the ordinary), and the circumstances of commission.
2. The confessor is not to inquire about the names of the persons with whom one sinned, though after the confession he may ask whether they were cleric or lay, or monk, priest, or deacon. Lyndwood cites William and others, including the Archdeacon, as saying that it is all

¹⁹³ Archdeacon, *Rosarium*, on Gratian, *De pen.* D. 1, c. 86 §4, v. *confitemini* (CIC 1:1185).

¹⁹⁴ Archdeacon, *Rosarium*, on Gratian, *De pen.* 3.8, *Perfecta* (CIC 1:1212).

¹⁹⁵ Attributed to St Edmund Rich of Abingdon (archbishop from 1234 to 1240), but actually fabricated from the legislation of Bishop Richard Poore of Salisbury (1217–21). Cheney, "William Lyndwood's *Provinciale*," p. 167.

- right if the penitent spontaneously reveals the identity of an accomplice with the intention of having the confessor pray for or secretly labour for the correction of the person. Similarly, it is acceptable for the confessor to make such an inquiry in good faith (329 n. g).
3. Major crimes are reserved to higher authorities (like the bishop).
 4. Such sins are homicide, sacrilege, incest, sins against nature, defiling virgins and nuns, striking parents and also clerics, breaking vows, and the like. Lyndwood finds eight classes of sins listed here, and notes that Raymond has a different analysis, listing five circumstances for reservation: when solemn penance is to be imposed; when the penitent is excommunicated; when he has contracted irregularity; when it concerns arson; and when by custom in a certain diocese some crimes are reserved to the bishop, like homicide, smothering of children, sacrilege, counterfeiting, violating church liberties, and the like. Hostiensis adds others: blasphemy; breaking vows; sins against nature, especially with beasts; when restitution is required; perjury; clandestine marriage. But John of Freiburg in the *Summa confessorum*, q. 50 of this title, says that, as far as the internal forum is concerned, one's own priest with cure of souls can absolve all secret sins which are not by law reserved specially to the bishop or which are not forbidden to such priests, but that one's superior should be consulted in difficult cases (329 n. n). Actually, John of Freiburg attributes all of this to the *Repertorium* of William Durandus (c.1280), and he begins with Durandus's complaint that positing so many cases is nothing other than to restrict the power of the priest, a power that is in fact plenary in such matters (329–30 n. t).¹⁹⁶
 5. The fifth part of Edmund's alleged constitution notes that there are some cases in which only the pope or his legate can absolve. Lyndwood names various cases (violent striking of a cleric, burning of a church, forging papal letters, participating in the liturgy with someone excommunicated by the pope). It used to be the case, because of the decretal *Capellandum* of Alexander III (X 4.21.1), that a priest who blessed a second nuptial needed to be absolved by the pope, but nowadays John XXII's extravagant, *Concertationi antique*, permits

¹⁹⁶ Freiburg, *Summa confessorum* 3.34.50 (fol. 189): "Et in fine subjungit [Willielmus Durandi], dicens: 'Tot casus ponere nil aliud est quam sacerdotum potestatem restringere, que tamen sibi in his est plenarie attributa.'"

the local bishop to take care of it.¹⁹⁷ Finally, of course, there are all the cases specified by papal legislation, for instance, those in the *Sext* and *Clementines*; John Andrew notes sixteen cases in the *Clementines*. Henry Bouhic¹⁹⁸ sums up papally reserved sins in these verses:

Per papam clerum feriens, falsarius, urens
Solvitur, et quisquis audet celebrare ligatus,
Simon si fuerit; sed fallit regula talis:
Impubes, monachus, mulier, vetulus quoque pauper,
Janitor hostilis, hos relevabit iter.

That is, the cases reserved to the pope are summarized as those involving strikers of clerics, counterfeiters, arsonists, excommunicated priests who say Mass, and simoniacs; but those who are unable to make the journey to the pope because of their condition, such as sub-teenagers, monks, women, old men, and prisoners, are exempted. Lyndwood ends by referring also to William Durandus's *Speculum*, where he simply says that "major" cases are reserved to the pope (330, n. t cont'd).¹⁹⁹

6. The sixth and final provision of the Pseudo-Edmund constitution is that penitents who are sent to the bishop must bring a letter from their local confessor detailing the circumstances of the sin involved, or else that priest himself should accompany the penitents. Lyndwood thinks that this provision rests on shaky grounds ("Hanc provisionem puto modica ratione fulciri"), since both the bishop and his penitentiary are "proper" priests for all subjects of the diocese, and they can freely hear their confessions, and each subject can freely come to them for confession, even without the curate's permission (330, n. p).

¹⁹⁷ John XXII's decretal on second marriages was not included in either of the two collections of extravagants that John Chappuis incorporated into the *CJC* in 1500, but it was included in the Stuttgart Codex, the contents of which are given by Friedberg in *CIC* 2:lxv–lxvi: no. II.21. Cf. the two extravagants with the title *Antique concertationi* (nos. 31 and 67) in the Munich MS that Friedberg details on cols lxvii–lxviii.

¹⁹⁸ Henry Bouhic (Bohic, de Bowyco, Boych, Boyk), d. 1350; his *Distinctiones super quinque libros Decretalium* was published in Lyons in 1498.

¹⁹⁹ William Durandus, *Speculum iudiciale*, book 1, tit. *De legato*, §*Nunc ostendendum*, no. 1: *Speculum juris*, 2 vols (Basel, 1574, repr. Aalen, 1975 as *Speculum iudiciale*), 1:45.

4) Lyndwood 5.16.4, *De penitentia* (p. 330)

This is another brief constitution attributed to St Edmund, specifying that deacons are not to give penances unless the priest is absent or somehow incapacitated.

5) Lyndwood 5.16.5, *Cum anima* (p. 330)²⁰⁰

It prohibits physicians from recommending any treatment injurious to the spiritual welfare of the patient—for instance, Lyndwood says, by prescribing illicit sex for getting rid of noxious humors, because, as Hostiensis says, there are other ways to achieve the same result (330, n. z).

6) Lyndwood 5.16.6, *Presbyteri stipendarii* (pp. 330–31)²⁰¹

This section of the constitution states that “stipendiary” priests (who do not have the cure of souls) are not allowed to hear confession except in cases permitted by law—as Lyndwood explains, in emergencies, or when the curate gives permission (330, n. p).

7) Lyndwood 5.16.7, *Sacerdos in penitentia* (pp. 331–34)²⁰²

The confessor is enjoined to discover the circumstances of each sin and to assign penances accordingly. Lyndwood says that by law a seven-year penance is imposed for a mortal sin, but the priest can modify the length of time, though without removing it altogether. This holds for secret sins, but for public offenses the statutes of the law should be followed (331, n. l). Confession is to take place in a common locale, where the confessor and the penitent can be seen by all. He is not to hear the confession of another priest’s parishioner without the permission of the priest or the bishop. Lyndwood has lengthy discussions on jurisdictional questions and exceptional circumstances in this matter. He notes that when one confesses to a priest who has authority from

²⁰⁰ A constitution attributed to Edmund’s immediate predecessor Richard Grant or Wethershed (1229–31), but really issued by Thomas Becket’s immediate successor, Richard of Dover, in 1175. Cheney, “William Lyndwood’s *Provinciale*,” p. 166; see *AppProv*, pp. 10–11.

²⁰¹ A constitution “innovated” in 1391 by Archbishop William Courtney, who attributed it to Archbishop Robert Winchelsey in 1305. C. R. Cheney, “The So-called Statutes of John Pecham and Robert Winchelsey for the Province of Canterbury,” *Journal of Ecclesiastical History* 12 (1961), 14–34, concludes at 23–25 that it is doubtful that *Presbyteri* was ever issued by Winchelsey, because there are no early MSS of the decree.

²⁰² Attributed to Walter Reynolds (1313–27), but really from some diocesan synod, c. 1225. Cheney, “William Lyndwood’s *Provinciale*,” p. 170.

the bishop or the pope, it is sufficient to let one's own priest know that one has confessed and been absolved, according to Peter of Tarentaise. But does the curate have to believe the penitent's claim? The answer comes from John of Freiburg, citing Aquinas "in questione quadam de quolibet," that yes, the priest does have to believe the penitent if it concerns a secret sin, which does not have to be revealed or confessed again. But if the priest knows that the penitent has been excommunicated for some offense, he does not have to believe that he has been absolved, without proof (332 n. z cont'd).²⁰³

The constitution continues with a citation of the falsely identified Walter (see n. 202 above): the confessor is not to enjoin a penance on a wife that would reveal a secret crime to her husband, and vice versa. Lyndwood notes, citing Hostiensis, that this would not be true for a public crime (332 n. c). Furthermore, in cases of theft, the sin is not dismissed until restitution is made. Lyndwood brings up situations in which money is given for foul purposes, such as to a prostitute or a magician [*mathematicus*]; in such cases, the money or goods are not to be returned to the giver but, rather, given to the poor, as is specified in Gratian's canon, *Non sane*.²⁰⁴ The same is true of winnings from gambling (332, n. m, middle).

When major crimes and serious doubts are at issue, the confessor should consult with the bishop or discreet counselors. He is to advise penitents whom he cannot yet absolve to do some good in the meantime, lest they fall into despair. Lyndwood observes that if a public crime is at issue, the penitent is to be compelled by means of ecclesiastical censures to make satisfaction. As for "doing some good in the meantime," since such sinners are not "in charity," any good that they do has no profit for eternal life, but nevertheless they can still derive some benefit from performing good deeds. First, it can make their eternal punishment less severe; he cites the canon *Si quis autem non habet charitatem*,²⁰⁵ speaking of one who without charity suffers death for the Faith. Second, it can gain temporal prosperity, and third, it can make their hearts more ready for

²⁰³ Lyndwood, *Provinciale*, seems to be citing Aquinas himself, and only at the end does he refer to the opinion of "Jo. An. in *Summa confessorum* eodem titulo, q. 48." This is a mistake, since Lyndwood knew very well that the John who was the author of the *Summa confessorum* was not John Andrew.

²⁰⁴ Gratian, *Decretum* C. 15 q. 5 c. 15, *Non sane* (from Augustine's letter to Macedonius) (*CIC* 1:742).

²⁰⁵ Gratian, *Decretum*, *De pen.* 3.49, *Si quis autem* (*CIC* 1:1228).

penitence (more canons are cited).²⁰⁶ Fourth, it can make them accustomed to doing good, as was said about the baptisms performed by John the Baptist (drawing on another canon).²⁰⁷ In the fifth place, we should believe that the Devil would not have as great power over him as he would if the good deeds had not been done. This is indicated by what St Gregory says in his *Dialogues* about the Jew whom demons could not harm when he signed himself with the cross; in fact, the demon who first found him reported to the chief demon, “I have found a vessel empty but signed” [Inveni vas vacuum sed signatum] (333 n. r).²⁰⁸ Finally, the confessor is not to elicit the names of accomplices. Lyndwood, however, explains that, if the sin cannot be sufficiently explained to the confessor without revealing another person’s identity, it is allowable, as long as there is no danger of harm to that person (334 n. e).

8) Lyndwood 5.16.8, *Prohibemus* (pp. 334–35)²⁰⁹

First, it forbids a priest who has fallen into a mortal sin from celebrating Mass unless he has first confessed it; and no one is to believe that mortal sins are deleted through general confessions (that is, Lyndwood explains, such as are made at the foot of the altar before Mass, and at Prime and Compline; 334 n. k). Second, no priest is ever to reveal under any circumstances a sin heard in confession, under pain of degradation from the priesthood. Lyndwood explains that a priest should not receive other confidences under the seal of confession, and even if he does, he is obliged to conceal it only *per modum consilii vel secreti*. Therefore, if a judge should duly order him to reveal something of the sort, he is required to do so, even if he has taken an oath not to reveal it (he cites Aquinas and Hostiensis). But if some tyrant unjustly seeks such information, the priest should then remain silent, or change the subject, or respond sophistically, according to William of Rennes (334 n. n). He gives more of William’s opinion a bit later: if the priest cannot evade the question, he can say, “I know nothing about it,” understanding it to mean [*subintelligendo*], “as a man.” Or, he can say outright, “I know nothing through confession,” understanding, “noth-

²⁰⁶ Gratian, *Cavendum* (*De pen.* D. 3 c. 47, *CIC* 1:1227) and *Si quilibet* (cited as in C. 22 q. 2, but the only canon of this name in Gratian is *Decretum* D. 54 c. 16, *CIC* 1:212, concerning a *servus* of the Jews who flees because of the Faith, whether already Christian or only now baptized); and *Falsas* (*De pen.* D. 5 c. 6, *CIC* 1:1241).

²⁰⁷ Gratian, *Decretum*, *De cons.* 4.135, *Non regenerabantur* (*CIC* 1:1406).

²⁰⁸ Paraphrasing Gregory, *Dialogues* 3.7 (PL 77:232).

²⁰⁹ Another Pseudo-Walter constitution, really from c.1225.

ing that should be revealed to you.” We see an instance of this sort of withholding of meaning in the statement of Jesus, “No one knows anything concerning that day or hour, neither the angels in heaven, nor the Son” (Mark 13.32), understanding, “anything that can be revealed” (335 n. q cont’d).

If, however, the priest knows of a person’s sin outside of confession, he can testify about it, but he should try as much as possible to keep quiet about it, for fear of giving scandal: citing Innocent IV, William, John of Freiburg, and Astesanus²¹⁰ (334 n. o). Lyndwood cites a whole battery of *doctores* who say that a priest can reveal a confessed sin if the penitent permits it, but he cautions that this is the equivalent of the penitent telling him the sin outside of confession. Another question: what if a person tells the confessor that he or she cannot resist the temptation to commit a specific crime; can he reveal it? Certain canonists say yes, relying on some canons of Gratian: he can tell someone who can help and not hinder [qui potest prodesse et non obesse]. Theologians, however, all agree, in commenting on Lateran IV, canon 21, *Omnis utriusque*, and elsewhere, that confessors can reveal nothing. The canonist Hostiensis has a compromise: the priest should do everything he can to impede the crime, but without revealing the person or betraying the confessant. Others say that it is not a true confession, and therefore, as noted, the priest can tell those who can help and not hinder. This was the opinion of Roderick on the canon *Sacerdos*, and the Archdeacon seems to agree;²¹¹ and what Johannes Teutonicus says on the canon *Si peccaverit* reinforces this view.²¹² Henry Bouhic seems

²¹⁰ Astesanus (that is, “from Asti”) was a Franciscan who completed his *Summa de casibus* in 1317; besides appearing in incunabular editions it was printed at Lyons in 1519 and at Rome in 1728–30.

²¹¹ See Gratian, *De pen.* 6.2, *Sacerdos* (CIC 1:1244). I suspect that Lyndwood is just taking all of this, including the reference to Roderick (an otherwise unknown decretist), from Archdeacon on *De pen.* 6.2, who says, “Primam sententiam tenet Rodo[ricus], qui dicit confitentem peccata, sc. jam commissa, non intelligas de committendis; quia si quis confitetur sacerdoti quod vult hominem interficere vel aliquid aliud nequiter operari, non tenetur sacerdos omnino celare, sed tali persone debet revelare que possit prodesse et non obesse, 22 q. 5, *Hoc videtur*, secundum Rodo” (referring to Gratian’s canon *Videtur*, C. 25, q. 5, c. 8 (CIC 1:884–85). As noted above (n. 24), I use the Strassburg c.1473 edition of Archdeacon Guy of Baysio’s *Rosarium*.

²¹² See the Ordinary Gloss to Gratian, *Decretum* C. 2 q. 1 c. 19, *Si peccaverit* (CJC 1:628): at the word *proditor* (which is what Lyndwood specifies), John Teutonicus asks, what about Jesus, did he not betray Judas’s (intended) crime, and did Paul not betray the plot of the Jews against him to the tribunal (see C. 23 q. 3 c. 2; *Maximianus* [CIC 896–97])? Yes, but those to whom they spoke were able to help (*prodesse*).

to agree with the theologians, and Lyndwood says he believes that this is the truer opinion (334 n. q bottom).

On the penalty for breaking the seal, Lyndwood agrees with those who say that the Fourth Lateran penalty supercedes earlier penalties. On the question of how a penitent can prove that a priest has revealed his sin, he responds, by two witnesses hearing him say that he learned of the sin in confession. If he does not specify “in confession,” he cannot be punished for breaking the seal, but nevertheless he should be penalized in an extraordinary manner (335 n. b).

9) Lyndwood 5.16.9, *Cum sepe* (pp. 335–36)²¹³

Pseudo-Walter hereby appoints in each deanery suitable confessors for parish priests and other priests without ordinary confessors.

10) Lyndwood 5.16.10, *Cum salubriter* (pp. 336–37)²¹⁴

The text is hard to parse, but the general idea is that, in view of the Fourth Lateran limitation of prelates to granting 40-day indulgences (*X* 5.38.14, *Cum ex eo*), “others” are not to bring disrepute upon the prelates through multiplied indulgences conceded to them by preaching sermons on them. Lyndwood discusses various connected matters, such as, when the archbishop and bishops together issue an indulgence, can one receive 40 days from the archbishop as metropolitan and another 40 from one’s own bishop? Hostiensis says yes, and John Andrew says no (336 n. s). He refers to restrictions on sermons by pardoners and abuses dealt with at the Lateran Council in *Cum ex eo* and in *Clem.* 5.9.2, *Abusionibus*, and cites the commentary of Paul de Liazaris (d. 1356), which says that the office of preaching does not belong to pardoners; they are only to ask for charitable donations, and to explain their indulgence, if they have one to offer (336 n. y). Can an indulgence help the souls in purgatory? Yes, says Aquinas, if the donor intends it. Peter and Albert agree, as do commentators on the *Clementines* (Stephen [Hugonetti, d. 1332], Peter of Ancharano [d. 1416], and William [of Montlaurun, d. 1332]) (337 n. a). What if an indulgence is false, does it still benefit the duped person? There are some reasons for saying yes, but more for saying no. Peter of Ancharano says no. Can the donor get his money

²¹³ A continuation of the previous constitution (which Lyndwood has broken up).

²¹⁴ A puzzling constitution on indulgences attributed to Archbishop John Peckham (1279–90), which may or may not be genuine. *Councils and Synods*, 2:1118, 1121–22.

back? Yes, if it still remains with the deceiver, but the matter is more dubious if it has already been applied to pious uses. Lyndwood cites the civil law and Bartolus on this matter (337, n. b).

11) Lyndwood 5.16.11, *Sacramentum penitentiae* (pp. 337–39)²¹⁵

It notes that some confessors absolve excommunicated persons without having the power to do so, and so the sacrament lacks its due fruit. Lyndwood brings up an objection: sin is deleted by contrition, as Hostiensis notes; hence, since the sinner is cleansed by God, the absolution of the priest has no effect. One can say in response that, even though God alone dismisses sin, nevertheless the priest manifests his office in enjoining penance, and, as Innocent IV says, a sinner is never absolved by God unless he is absolved by a priest, according to the words of Jesus, “Whatsoever thou shalt bind upon earth,” etc. (Matt 16:19); hence Ambrose says in the canon *Verbum Dei*, “The word of God dismisses sins, but the priest is the judge.”²¹⁶ He cites Peter of Tarantaise’s commentary on the *Sentences*: just as baptism cleanses original sin, so the priest’s absolution cleanses actual sin. Whence also Aquinas says that, if a person is not perfectly disposed to receive grace in confession before absolution is given, he would receive grace from the sacramental absolution, if he puts no obstacle in the way. Peter says similarly, and adds that the persons who are sufficiently contrite receive an increase of grace (337 n. g).

The constitution mentions the imposition of hand as a sign of absolution, and Lyndwood cites Aquinas (like Burgh, 14 §A) as saying that this is not necessary, since the sacrament of penance is not ordained to impart some excellence of grace but to remit sins; accordingly, the Sign of the Cross would be more appropriate (338, n. t). A penitent’s own priest can absolve a penitent from minor excommunication, unless the sin is reserved, but not major excommunication, according to John Andrew and Lyndwood’s own contemporary Dominic of San Gimignano, who also cites the *Consilia* of Frederic of Siena (a contemporary of John Andrew, first half of the 14th century). However, Innocent IV and Hostiensis say that the local priest can also absolve non-reserved major excommunications, which is also William of Rennes’s opinion.

²¹⁵ A constitution of Archbishop Peckham’s from the Council of Lambeth of 1281. *Councils and Synods*, 2:898–99.

²¹⁶ Gratian, *De pen.* D. 1, c. 51 (*CIC* 1:1170–71).

Lyndwood thinks that the view of John Andrew is truer, and so does John in his *Coll[ectarius]*,²¹⁷ and he also cites Jesselin de Cassagnes's commentary on the *Clementines* and Durandus's *Speculum*, saying that Matthew (probably Matthew of Rome, student of John Andrew and Archdeacon, who commented on the *Clementines*) and Peter of Ancharano concur (338 n. b).

12) Lyndwood 5.16.12, *Preterea* (pp. 339–40)²¹⁸

It requires scandalous crimes like public incest to be castigated by solemn penance, which is to be revived, having fallen into neglect. And the sin of voluntary homicide, whether secret or publicly known, is reserved to the bishop. Lyndwood notes that only the bishop is to enjoin solemn penance, since all serious sins are reserved to the bishop (340 n. f). He brings up an objection: will not the performance of solemn penance reveal a person's crime or confession? Not to worry, he says, since, even though suspicion might arise that the penitent has committed a great crime, there is still no revelation of guilt, since sometimes a person will do such a penance on behalf of another, and sometimes even for no sin at all (on this last point he refers to his note on p. 339, n. g). Finally, he asks whether solemn penance can be done more than once, and says that Raymond says no, citing St Ambrose in the canon *Reperiuntur*.²¹⁹ But William, commenting on Raymond, says that repetition is warranted when custom allows it, and Peter of Tarentaise in his commentary on Lombard's *Sentences* agrees. As for why the *jus commune* does not allow repetition, there are three reasons, which Aquinas gives in his *Sentences* commentary: 1) lest it become undervalued; 2) because it symbolizes the expulsion from Paradise; and 3) because it is, in effect, a profession of perpetual penance (340 n. g).

13) Lyndwood 5.16.13, *Licet a sanctis* (pp. 340–42)²²⁰

This constitution resurrects the rule of appointing a learned and capable confessor for all of the other priests and ministers of each deanery, while allowing other common penitentiaries to be used. Lyndwood says that

²¹⁷ I have not been able to identify this author. Lyndwood cites him elsewhere (pp. 324 n. a, 343 n. b., 344 n. b) in his commentary on the decretal *Omnis utriusque* (X 5.38.12).

²¹⁸ Another constitution from Lambeth in 1281. *Councils and Synods*, 2:899–900.

²¹⁹ Gratian, *Decretum*, *De pen.* 3.2, *Reperiuntur* (CIC 1:1211).

²²⁰ Likewise from the Lambeth council of 1281. *Councils and Synods*, 2:900.

this provision for a special confessor in each deanery does not seem to make sense except for sins reserved to the bishop (341, n. g).

14) Lyndwood 5.16.14, *Confessiones mulierum* (pp. 342–43)²²¹

For Lyndwood's commentary on this constitution, see above, p. 254.

15) Lyndwood 5.16.15, *In confessionibus et predicationibus* (p. 343)

In this constitution, Pseudo-Sudbury orders priests to emphasize frequently that every sexual union of man and woman outside marriage is a mortal sin.

16) Lyndwood 5.16.16, *Confessiones ter in anno* (pp. 343–45)

See above, pp. 254–55. This constitution urges confession and communion three times a year, namely, at Easter, Pentecost, and Christmas, and gives the penalty for not confessing once a year to one's own priest and not receiving communion at Easter, namely, prohibition from entering the church and refusal of Christian burial. On the question of whether the obligation to confess to one's own priest could be satisfied by going to a friar, he cites John Acton as seeming to say yes, as does William of Montlaurun; but, he notes, other authorities do not classify friars in this way. Peter of Ancharano considers them to be "naked ministers" who cannot delegate their ministry to others, unlike parish priests (344 n. b).

²²¹ As noted above, pp. 253–54, this and the final two constitutions in this title are really by Bishop Poore (d. 1221) but ascribed to Archbishop Sudbury (d. 1381).

BETWEEN THE REALITY OF LIFE AND THE ORDER OF CANON LAW: THE HOLY APOSTOLIC PENITENTIARY AND THE SUPPLICATIONS FROM NORWAY 1448–1531¹

Torstein Jørgensen

Introductory Remarks

In the evening of Wednesday the 8th of February, in the Year of the Lord 1525, a banquet was held in the canons' community house [*convivio canonicorum*] in the Norwegian town of Stavanger. The occasion was the annual celebration of the dedication day of the neighbouring church of St Mary [*dies dedicationis beate Virginis Marie*]. According to custom, a great number of the city-folk were present: men and women, clergymen as well as lay people. And the atmosphere was cheerful and peaceful—to begin with. But when the banquet was over, one of the guests was lying fatally wounded on the floor, after having received a blow on his head by the sword of one of the canons.² The preserved document mentions the full name of the perpetrator: *Torgillus Amundi*, or Torgils Amundsson (which must have been his Norwegian name), whereas the poor victim is only referred to by his first name, *Petrus* [Peter].

Five months later a letter was issued from the Apostolic Penitentiary in Rome granting first of all an absolution [*absolutio*] for homicide, and secondly a dispensation [*dispensatio*] for the irregularity [*irregularitas*] contracted by the event that also allowed the supplicant to be eligible for all sorts of possible future benefices. In the penitentiary protocols his story, as a homicide case, was registered under the *de diversis for- mis/materiis* column, as was the normal procedure with this category of supplications. And it was reported in minute detail. From the fact that the very same canon Torgils some five years later is mentioned

¹ Much of the material in this chapter appeared in Norwegian in T. Jørgensen and G. Saletnich, *Synder og Pavemakt: Botsbrev fra Den Norske Kirkeprovins og Suderøyene til Pavestolen 1438–1531*, *Diplomatarium Poenitentiariae Norvegicum* (Stavanger, 2004), pp. 99–100 [hereafter *Synder og Pavemakt*].

² T. Jørgensen and G. Saletnich, *Letters to the Pope: Norwegian Relations to the Holy See in the Late Middle Ages* (Stavanger, 1999), pp. 62–65. See also *Synder og Pavemakt*, 165–66.

in a diploma as abbot in one of the bigger Norwegian monasteries,³ we can conclude that the obtained penitentiary *littera* with the papal *fiat* [approval] must have reached the repentant canon in his distant location on the west coast of Norway.

Few sources from the late Middle Ages render a better illustration of the web that connected individual destinies and actual incidents of life from all corners of western Christendom with the curial centre of Rome than the recently opened archives of the Apostolic Penitentiary in Rome with its thousands of registered supplications. The Torgils case from Stavanger is, in this respect, a most representative text. A special characteristic of the penitentiary supplications is that they represent a crucial meeting point between concrete—often acute—situations of local individuals within their small worlds, on the one hand, and the overarching larger world of the standards and regulations of canon law on the other. The involvement by the priest Torgils in a murder case in outlying Stavanger, as distant from Rome as possible on the European continent, thus, was *not* merely a local event but was a matter of serious concern to the Holy See.

In this chapter we will give an introduction to the newly registered Norwegian and Icelandic supplications to the Holy See and will contribute to the interpretation of penitentiary supplications in the light of comparisons to similar texts from other areas. We will take a close look at the institution of the Papal Penitentiary and will provide some notes on the relations between canonical regulations and local law codes.

Periphery and Centre in Medieval Europe

Although the new world of the Americas was about to become known to Europe at the time of the supplication from Torgils, the country of Norway was, as seen from Rome, still, as it had been throughout the Middle Ages, looked upon as “the last country of the world,” bordering the Seventh Sea [*mare septentrionale*], in Nordic sources sometimes referred to as the Sea of Fog. The metropolitan see of Nidaros—today Trondheim—was in 1525 still the northernmost of all church provinces in western Christendom.

³ Utstein Monastery in Rennesøy near Stavanger, *Diplomatarium Norvegicum*, vol. 4, ed. C. C. A. Lange and C. R. Unger (Christiania, 1858), no. 1094 [hereafter *DN*].

However, if the geographical distance between Nidaros and Rome was great, the difference in mentality, faith, and conduct was not automatically correspondingly wide. To be sure, it is not difficult to point out special and distinctive features and characteristics of Scandinavian ways of life, social organization, behaviour, and thinking in the period. But when looking at late medieval Norwegian and Icelandic societies, one cannot escape noticing also the very strong imprints of an overarching common European culture with its joint set of norms and practices. As in Dubrovnik, Naples, Wittenberg, or any place on the map of central and western Europe at the time, so too the lives of the people of Norway and Iceland were from the cradle to the grave framed by the religious apparatus of the Catholic Church in all its different aspects. Distance in geography, thus, did not by necessity imply distance in religious thinking and practice. And in the late Middle Ages, the Apostolic Penitentiary was an important factor in this setting.

*The Institution of the Holy Apostolic Penitentiary
in the Late Middle Ages*

Historical Origin

Historians of the institution of the Penitentiary agree that the emergence of this unit of the papal administration dates from the mid- or late 12th century. The establishment of the Penitentiary was a direct result of the fact that during this period, the pope reserved in principle the right to exercise supremacy over all disciplinary matters. This in turn required the faithful in all of Latin Christendom to send their plenary requests to Rome or Avignon in order to obtain absolution. Depending on the seriousness of the transgression, certain requests for absolution—for sins such as killing one's own parents or children, violence against the clergy, church burning, and simony—could already at this time only be handled at the papal court. The origin of this office is described by scholars as connected with the ancient tradition of penitential pilgrimages to Rome, where the faithful travelled, as it was formulated, "to Saint Peter in order to obtain God's mercy in a better way."⁴

⁴ "Ad Sanctum Petrum ut citius misericordiam Dei consequi posset"; see R. A. Aronstam, "Penitential Pilgrimages to Rome in the Early Middle Ages," *Archivum Historiae Pontificae* 13 (1975), 70 n. 31.

Distinguished from pilgrimages made for purely devotional purposes, this type of penitential pilgrimage, also referred to as expiatory or judicial, was made for the purpose of gaining remission for grave sins. These pilgrims brought letters in which their sins were described, written by their local bishops and addressed to the pope. The increase, not only in the number of pilgrims but also in the variety of cases, soon far exceeded what the pope could handle himself, and it created the need for a well-organized institution that, under the pope's supervision, could deal with the cases in an expedient and efficient way.⁵

The theological basis of the institution of the Penitentiary rests on the basic tenet that the *plenitudo potestatis*, or the full authority in all affairs, is handed down from St Peter to the succession of popes. As holder of St Peter's keys, the pope is given authority to loosen and to bind. He can grant grace or withhold it. During the 13th century, the papacy delegated this authority to a single official from whom a particular office, that of the Penitentiary, developed. The Penitentiary, thus, functioned in the late Middle Ages as a universal chair of grace. It was addressed by believers from all over Latin Christendom under the jurisdiction of Rome or Avignon. Pilgrims either appeared in person or forwarded their petitions through mandataries.⁶ In the 15th century, the leader of the office, the major penitentiary [*poenitentiarius maior*], filled one of the most important offices at the curia.

The process of institutionalizing grants of grace by the Holy See, and in turn the establishment of the Penitentiary office, took place in close accord with the development of canon law from the mid-11th century onwards. As canon law came to regulate the lives and work of both clergy and lay people, the need for an institution that could absolve those who did not manage to comply with the strictness of the law of the Church grew more urgent. The Church was the guardian not only of God's commandments but also of the mercy and grace of

⁵ An interesting note in the registers of Pope Innocent IV from as early as 1243 states that only a few penitent pilgrims could be expected to travel to Rome from such a distant place as "Nidarholm in Iceland [*sic*]." The abbot is therefore authorized to grant absolution in cases normally reserved to the authority of the pope, on payment by the offenders of what the journey to Rome and back would cost them. This measure shows that the papal administration at times could take a very pragmatic stand regarding realities as they were. See E. Berger, *Registres d'Innocent IV, I (1243-1248)* (Paris, 1884), no. 124, p. 25.

⁶ According to Pope Leo X, the Penitentiary was the place "in qua morum censura et animarum precipue salus vertitur," Archivio Segreto Vaticano [henceforth ASV] Reg. Vat. vol. 1200, fol. 428r; L. Schmugge, P. Hersperger, and B. Wiggerhauser, *Die Supplikenregister der päpstlichen Pönitentiarie aus der Zeit Pius' II. (1458-1464)*, Bibliothek des Deutschen historischen Instituts in Rom, 84 (Tübingen, 1996), p. 9.

Jesus Christ. As a result, the letters dispatched from the Penitentiary granting requests of the petitioners can be understood as letters of grace by which the general norm of canon law in some cases was set aside or by which extraordinary privileges were granted. In the 15th century, the dispensatory right of the pope, or his mandataries, also included matters categorized as under the divine law, or *ius divinum*.⁷

Absolution, Dispensation, Licence, or Letter of Declaration

The aim of a request sent to the curia to be treated by the Penitentiary was to obtain either an absolution, a dispensation, a licence or a letter of declaration.

Absolution [*absolutio*] was applied to people who found themselves under ecclesiastical excommunication. They either had committed a violation of canon law that *ipso facto* put them in such a state, or they had been accused by denunciation. Excommunication involved an expulsion from the community of the Church, a denial of access to the sacraments, and, ultimately, the denial of salvation. People who committed the following crimes were automatically under excommunication: killing or injuring clergy, partaking or remaining in prohibited relations of marriage and carnal relations, escaping from monasteries, simony, and, finally, violating the rules prescribed for consecration of the ecclesiastical offices.

When it came to the category of dispensation [*dispensatio*], most of the communications came from two groups. One group consisted of persons who wanted to contract marriages with relatives in closer degrees of relations than was allowed by canon law. The other group consisted of students or clerics of lower rank who, despite some defect [*defectus*] according to the law, wanted access to higher offices. Clerics who wanted to be promoted to higher ecclesiastical offices, particularly those including benefices⁸ or prebendaries, or cure for souls, were required to comply with certain rules. For instance, they were required to have been born within a legal marriage, to have reached a certain age, and

⁷ Thomas Aquinas distinguished between the *lex divina* [the divine commandments], the *lex naturalis* [human participation in the divine world order], and the *lex humana* [human rules for the general well-being].

⁸ A benefice could be a rectorate, vicariate, curacy, or a canonicate; F. Tamburini, "Die Apostolische Poenitentiarie und die Dispense super defectu natalium," in *Illegitimität im Spätmittelalter*, ed. L. Schmugge, Schriften des Historischen Kollegs Kolloquien, 29 (Munich, 1994), p. 126.

to be free of any physical handicap. If a person failed to meet any of these requirements, he was considered irregular, and his access to the above-mentioned offices would have been impeded.⁹ These defects,¹⁰ however, could be overruled by a dispensation from the pope. There were also cases in which priests failed to report their illegitimate births in order to be consecrated into the priesthood, thereby committing the serious crime of excess [*excessus*]. If a cleric violated canonical rules he would be declared irregular¹¹ and would lack the formal basis [*titulus*] for the continuation of his office. In serious cases, his crime might have led to the loss of prebendaries. In cases of excess, or of a clergyman acquiring the status of irregularity, both a rehabilitation [*rehabilitatio*] and a dispensation made directly from the curia were necessary in order for him to remain in office.

The category of licence [*licentia*] granted individuals certain unusual privileges requiring the consent of the Penitentiary. Licences permitted, for example, relief from the rules for fasting, the right to communicate with Muslims (which was necessary for pilgrims going to Jerusalem), permission for monks and nuns to change monasteries or orders, and permission for individuals to confess outside their local parish. Licences also granted the exemption from an oath.

A fourth type of supplication contained a request for a letter of declaration. One important group were the supplicatory requests for a papal letter to confirm the innocence of persons who had been or might be accused of culpability. There were also requests for declarations to legitimize children born out of wedlock.

Organization and Staff

During the 15th century, the Penitentiary became an efficiently organized institution of considerable size and employed between 100 and 200 people. Together with the Apostolic Chamber¹² and the Chancellor,¹³ the Penitentiary constituted one of the most important bodies of the medieval curia.

⁹ Irregularity [*irregularitas*] also implied incapability [*incapacitas*], i.e., to serve in the higher ecclesiastical offices.

¹⁰ The defects were referred to as defect of birth [*defectus natalium*], defect of age [*defectus aetatis*], and defect of the body [*defectus corporis*].

¹¹ This was referred to as *irregularitas ex delicto*.

¹² *Camera apostolica*, the institution that dealt with the financial affairs of the Holy See.

¹³ *Cancellaria*, the institution authorized to prepare and issue papal documents.

The leader of the office was the major penitentiary [*poenitentiarius maior*], also called the cardinal penitentiary. The preserved lists of major penitentiaries consist of approximately 100 individuals who held office. Each major penitentiary was appointed directly by the pope. Yet apart from this information, it is difficult to provide a common list of the office's mandates and tasks, as each was bestowed with new authority in accordance with the new demands of the times. Because the tasks and mandates were given to the newly appointed major penitentiary orally,¹⁴ and changed from pope to pope, we can say that the office was slightly reformulated with the succession of each pope. However, one duty remained common to each: the major penitentiary exercised the exclusive right, together with the pope, to grant a penitentiary supplication in the so-called reserved cases. Once conferred, the personal signature of the major penitentiary in the form of a *fiat* testifies to the authenticity of the supplication.

Although the major penitentiary presided over the minor penitentiaries [*poenitentiarii minores*], it has been established that the origin of the minor penitentiaries as officials at the papal court is older than that of the major penitentiary. In fact, it is certain that the pope had some "coadjutors and co-operators to listen to confessions and to impose penitence"¹⁵ long before the need for these officials was officially decided at the Lateran Council IV in 1215. From the beginning, the officials responsible for the function of the Penitentiary at the papacy belonged to the secular or ordinary clergy and did not belong to a monastic order. After the establishment of the mendicant orders, the office of the minor penitentiaries was filled by friars from such orders. Like the major penitentiary, the minor penitentiaries were appointed directly by the pope and described as "permanent chaplains and members of the household of the pope."¹⁶ Their position was so prestigious that in the hieratic cortège of the pope, they followed directly after the cardinals and preceded the other prelates of the curia. The minor penitentiaries, often summoned by the pope for diplomatic missions, were likewise

¹⁴ *Viva oraculo vocis.*

¹⁵ "Coadjutores et cooperatores... in audiendis confessionibus et penitentibus iniungendis"; see F. Tamburini, "La Sacrée Pénitencerie apostolique et les pénitenciers mineurs pontificaux," *Studia Canonica* 31 (1997), 449–59 at 452.

¹⁶ "Cappellani et familiares continui commensales summi pontificis"; see F. Tamburini, "La Sacrée Pénitencerie apostolique," p. 452.

bestowed with a number of privileges. One special function in particular was to lay the deceased body of the pope in the coffin.

According to the source material, the number of minor penitentiaries during the 14th century varied from eight to nineteen. Generally, they were selected from the Dominican and Franciscan orders. Most of them were masters of theology, doctors of the Bible, or specialists in canon law, and they often went on to become bishops in their own right.¹⁷ Because their main duty was to serve the penitentiary pilgrims in Rome or Avignon in their own native languages, the minor penitentiaries were selected from different countries. During the 14th century, 81 were appointed from Italy, 54 from France, 17 from Germany, 14 from Spain, 8 from the Northern countries, 5 from Hungary, and 5 from the Netherlands.

In addition to the major and minor penitentiaries, the duties of many other officials overlapped with theirs at the Penitentiary, a fact which in itself demonstrates the complexity and efficiency of this office. Generally, the tasks of these other officials were to document the pilgrims' supplications, to prepare minutes, to record dates and register codes, and to calculate fees according to predetermined lists of tariffs. These subordinate officials were the regent, the auditor, the registrar, the scribe, the distributor, the computator, the corrector, the sealer, and the proctor.¹⁸

The regent [*regens*] was, as indicated by the title, the deputy of the major penitentiary and acted with the same authorities as his superior. The auditor [*auditor poenitentiariae*]¹⁹ was the office's specialist in canon law, available to give judicial advice in cases of need. He was also responsible for marking the date, year, and place on the petition at the moment it had been officially accepted. The task of his subordinate registrar [*registrator*] was to note the date of the case's examination in the protocols and on the back side of the petition.

The most numerous group of officials in the Penitentiary were the scribes [*scriptores*]. By the mid-15th century their number was 24, and as a group they had six assistants at their disposal. It was the task of the scribes to copy the letter of reply [*littera*] and to enter the abbrevi-

¹⁷ Altogether 86 of the minor penitentiaries of the 14th century got this promotion.

¹⁸ E. Göller, *Die Päpstliche Pönitentiarie von ihrem Ursprung bis zu ihrer Umgestaltung unter Pius V., I-II*, Bibliothek des Kgl. Preussischen Historischen Instituts in Rom, 3-4, 7-8 (Rome, 1907-11), I.1:159-84.

¹⁹ Also called *datarius officii poenitentiariae* or *doctor in iure canonico*.

ated version of the case into the protocol. The task of the distributor [*distributor* or *distributor taxator*] was to distribute the writing assignments to the scribes and to establish the taxes required for each case. He was selected from the group of scribes, and his appointment lasted only one month, like that of the bookkeeper [*computator*], whose duty it was to calculate the incomes from the taxes of expedition and to divide this money among the scribes. Before the letters of reply were dispatched from the Penitentiary, the corrector [*corrector*] was called upon to proofread and, if necessary, correct them, and the sealer [*sigillator*] placed the official seal on the document. A special office was filled by the proctor [*procurator*],²⁰ who formed a *collegium* of 24 persons to serve as intermediaries between the applicant and the Penitentiary, making sure that the petitions were drafted in accordance with prescribed rules. When a case was complete the proctor issued the letter of reply to the applicant.

The Handling of a Supplication and its Formal Elements

When a supplication arrived at the office of the Penitentiary, it did so in the form of a written paper petition. Sometimes the penitents brought their letters to the Penitentiary themselves. At other times, groups of supplications were brought to the Penitentiary by messengers from different regions. But in most cases, the petitions seem to have been properly set up and handed in to the Penitentiary by a proctor.²¹

If the supplication was granted, the text of the petition constituted the basis for the second version of the case, the letter of reply [*littera*]. This was always composed on parchment. In this letter we find the same elements as those of the petition repeated, but framed according to more formal standards. If the petition was rejected, it most likely was simply returned to the petitioner, perhaps with an indication of the decision marked on it.²²

²⁰ Also called *solicitor*; see Göller, *Die Päpstliche Pönitentiarie*, II.1:73.

²¹ If the penitent did not show up in person at the Penitentiary but let his case be forwarded only by a proctor, this was normally indicated by the formula *ex parte* [on behalf of], before the mentioning of the petitioner's name.

²² All known *litterae* deal only with cases that were granted, and the minute protocols also record only such cases.

When a case was resolved, a third version of the case was recorded in protocols in the *Registra Supplicationis* of the Penitentiary. This final version was the only record of the case that remained in the office of the Penitentiary, whereas the two other documents, the petition and the letter of reply, were clipped together and sent back to the petitioner.²³ The oldest volume of registered supplications dates from 1409, although it is not until the middle of the 15th century that an unbroken series of such protocols has been preserved.

The petitions, letters of reply, and the protocol version of the supplication consisted (with some variation) of the same formal elements: the address [*intitulatio*], the disposition/account [*dispositio/narratio*], the supplication [*supplicatio*], the consent formula [*fiat*], and the dating [*datatio*]. A number of books from the Middle Ages set down rules, instructions, and examples about how the letters were to be composed. The address contained the name, title, diocese of the petitioner, the diocese in which the case took place, and the addressee. In the disposition, the origin and facts of the case were stated and were often phrased in standard words. In cases where an account was needed, there was a narrative, often in minute detail, of the course of events causing the need for a grace from the papacy. The supplication expressed the request for grace. At the end of the document, the formula of consent was added either by the major penitentiary or his regent. After the formula itself, the signing official inserted his signature with the capital letter of his Christian name, together with his title. Known from the end of the 13th century, the particular formula of the *fiat* contained supplementary remarks specific to the case. Whereas the phrase *fiat ut in forma* expressed that the case had been granted on the basis of the ordinary authorities of the major penitentiary, *fiat de speciali* indicated that the case was resolved on a special mandate and privilege from the pope. The phrase *fiat de expresse* was used to indicate that the pope had given his grant orally. In the lower margin of the petition, immediately following the *fiat*, the auditor wrote the date.

In the original historical context, the register copy in the protocols was the least important version of the supplication request, because it was merely a record for the internal use of the Penitentiary. However, today these registers are the most important vestiges of the activity of

²³ F. Tamburini, "Suppliche e lettere di penitenzieria (sec. XIV–XV)," *Archivum Historiae Pontificae* 1 (1973), 149–208.

this office. For the period between the first protocol until the Reformation (1409–1537), there are a total of 78 volumes of such registers in the penitentiary archives. Considering that approximately 15,000 supplication requests were managed by the Penitentiary during a mere six year period under the pontificate of Pius II (1458–64), one can easily estimate the enormous scope of these sources. It is also important to remember that in addition to these documented cases there were numerous supplications that were never registered in the protocols, and of which no trace remains. These would have been cases treated by the minor penitentiaries on the basis of their ordinary authority [*facultas ordinaria*]. Others would have belonged to the so-called cases of conscience [*forum internum*] for which the letter of reply was a secret letter [*littera clausa*].²⁴

In the recorded version of the protocols a special formula, which requires special explanation, was sometimes used, especially in the records of the longer cases of *de declaratoriis*. After the standard phrase stating that the supplication was granted and left to judicial trial by the auditor, a relatively standard term stated that the case was to be approved by the ordinary [*ordinarius*], i.e., normally the bishop of the petitioner's diocese, whose task it was to establish whether the version of the case in the supplication request matched the real course of events, thus indicating that the case was not simply resolved by the *fiat* of the Penitentiary. Up to that stage, the Penitentiary's treatment of the case had depended entirely on the fact that the version of the case presented in the petition was correct. But this version stemmed from the penitent himself, without guarantee that his story reflected the complete truth. As a rule, therefore, these cases, which were all very serious ones, seem to have been turned over to the bishop of the petitioner's own diocese as a final precaution before the ultimate decision at the papal court was issued to the petitioner. Thus it is clear that the local bishop held a crucial position in the petitioner's ultimate absolution, the attainment of which was contingent upon the bishop's confirmation.

²⁴ Schmugge, et al., *Die Supplikenregister der päpstlichen Pönitentiarie*, p. 39.

*Taxes and Charges*²⁵

In principle, the grace of God, through the intermediary of the Church, was to be granted freely. Anything else would have implied that the Church would have been violating her own rules, thus rendering herself guilty of simony. Even so, cases forwarded to the papacy had their price in the form of money. These expenses were not, however, at least according to the teaching of the Church, looked upon as payment for the forgiveness of sin but instead were charges that had to be imposed in order to cover the costs of treating the case on its way through the system, for instance, to fund the salaries of the various officials.²⁶

The prices of the supplication requests forwarded to the Penitentiary differed according to type and the case's contents but generally grew at an increasing rate. During the 15th century, these prices rose to a level that was hardly proportionate with the true costs of the administering of the case. In addition, the many other charges and expenses such as tips (and sometimes bribes) offered to the scribes and the proctors might in fact have surpassed the official charges of the Penitentiary itself. Altogether, this implied that the supplication request for grace could amount to a very expensive affair, and complaints about the level of costs belonged to the order of the day.²⁷ From the 14th century onwards, regular tariffs for the diverse categories of supplication requests begin to be issued by the Penitentiary. It has been estimated that the charges at the papal court doubled between the mid-14th and the beginning of the 16th century. But there were also examples of cases that were treated free of charge if the petitioner was poor²⁸ or if he was an important official at the papal Court. In such cases, the distributor added the formula *gratis pro deo*, to indicate that these petitions should be exempted from taxation.

²⁵ For a more detailed presentation of penitentiary taxation, see W. P. Müller, "Die Gebühren der Päpstlichen Pönitentiarie 1338–1569," *Quellen und Forschungen aus Italienischen Archiven und Bibliotheken* 78 (1998), 189–261.

²⁶ Göller, *Die Päpstliche Pönitentiarie*, II.1:132–89; Schmugge, et al., *Die Supplikenregister der päpstlichen Pönitentiarie*, pp. 51–54.

²⁷ This is a main theme throughout H. C. Lea, *A Formulary of the Papal Penitentiary in the Thirteenth Century* (Philadelphia, 1892). See also B. Gebhardt, *Die Gravamina der deutschen Nation gegen der römischen Hof* (Breslau, 1895), p. 7.

²⁸ S. Weiss, *Kurie und Ortskirche: Die Beziehungen zwischen Salzburg und dem päpstlichen Hof unter Martin V. (1417–1431)*, Bibliothek des Deutschen Historischen Instituts in Rom, 76 (Tübingen, 1994), pp. 435–36.

Reserved Cases

There was a clear tendency in the Middle Ages for the pope to reserve to himself the decision of matters previously decided at the provincial and diocesan levels. Already the Lateran Council II resolved in 1139 that the right to absolve from homicide when a cleric was killed [*presbyterocidium*] should be reserved for the pope.²⁹ In the course of the following centuries, more and more cases fell under the same rule, i.e., the right to dispense from illegitimacy [*defectus natalis*],³⁰ from underage [*defectus aetatis*], and from defects on the body [*defectus corporis*]³¹ (all three impediments to the priesthood), cases of marriages unto the fourth degree of consanguinity and affinity, apostasy from monasteries, as well as dispensations to choose one's own confessor, relief in the regulations of fasting, etc. A direct reflection of these decisions is visible in the classification of supplications according to the nature of the cases made in the penitentiary protocols.

Norwegian Material

It has been suggested that when the Black Death and other plagues were ravaging Europe in the course of the 14th and 15th centuries, Norway was one of the countries to be hit hardest.³² Whether or not this was the case, it can be established with reasonable certainty that the Norwegian mainland was depopulated from a maximum of 350,000 souls around the year 1300 to a minimum of 150,000 around 1450, i.e., a reduction of 50–65 percent.³³ This is an important piece of information to bear in mind when counting the supplications from the see of Nidaros to the Penitentiary and when comparing the numbers to the numbers of supplications from more central and densely populated Church provinces. It is very easy to conclude that the main reason behind the scarce number of Nidaros supplications is to be found in geographical distance. And

²⁹ J. B. Sägmüller, *Lehrbuch der katholischen Kirchenrechts, I–II* (Freiburg, 1914), 1:226–27.

³⁰ B. Schimmelpfennig, "Zölibat und Lage der 'Priestersöhne' vom 11. bis 14. Jahrhundert," *Historische Zeitschrift* 227 (1978), 1–44; *Illegitimität im Spätmittelalter*, ed. L. Schmugge, Schriften des Historischen Kollegs, Kolloquien, 29 (Munich, 1994).

³¹ W. Plöchl, *Geschichte des Kirchenrechts*, vol. 2, *Das Kirchenrecht der abendländischen Christenheit 1055–1517* (Vienna, 1960–62), pp. 288–305.

³² A. Holmsen, *Norges historie: Fra de eldste tider til 1660* (Oslo, 1977), p. 333.

³³ O. J. Benedictow, *Plague in the Late Medieval Nordic Countries: Epidemiological Studies* (Oslo, 1992), pp. 104–05, 272–73.

this may also have been the case—or a component of the case. But an extraordinarily reduced population number is perhaps a more likely explanation. A comparison of the relative numbers of supplications from different church provinces against that of the population of the same areas would certainly be most illuminating. But at the present stage of research on the penitentiary material, such a comparative approach is possible only to a very limited extent.

*Norwegian Material—Categories and Provenance*³⁴

The register protocols of the Penitentiary contain altogether 100 supplications from the dioceses under the province of Nidaros. This means, for instance, when compared to the German material, that for every Norwegian entry there are approximately 1,000 supplications from the German provinces. Nevertheless, the collection of penitentiary supplications represents the biggest supplement of medieval sources relative to Norway throughout the last 50 years.³⁵

The archdiocese of Nidaros, during the period concerned, consisted of five dioceses on the Norwegian mainland. In addition to the see of Nidaros itself were Oslo, Bergen, Stavanger, and Hamar. In addition, the province included, with some variations, five episcopal sees on the Norwegian-dominated islands in the North Atlantic, i.e., Skálholt and Hólar on Iceland, the Orkneys with Shetland, the Farro Islands and Gardar (Greenland). In our study we have included also 44 supplications from the Hebrides (in the Norse medieval sources called the Suder Islands), as this group of islands was old Norwegian territory and the ecclesiastical connections to Nidaros remained long after the political incorporation of these lands into England and Scotland. Finally, we have included one supplication from the Danish-Norwegian queen, Dorteia, wife of King Christian I.

³⁴ For a more detailed presentation of this material, see Jørgensen and Saletnich, *Synder og Pavemakt*.

³⁵ All hitherto known medieval Norwegian texts—or better: all medieval sources in Norway and abroad containing some piece of information about Norway—have over the last 150 years been collected in the *Diplomatarium Norvegicum* (22 vols, Christiana and Oslo, 1849–1990). For some years now these texts have been available on a full-text data-base—in their original Latin or Old Norse language (English version: http://dokpro.uio.no/dipl_norv/diplom_field_eng.html)—with searching possibilities on words either in the text itself, the regests, dates, or volumes. The registered supplications from the Penitentiary protocols will represent the biggest supplement of new texts relative to Norway for the last 50 years.

For the dioceses of the Orkneys and Hebrides, we have circumscribed the evidence at the year 1472/73, as these dioceses at this time were formally transferred to the newly founded Scottish archdiocese of St Andrew's. For the other dioceses we have searched the protocols up to the year of the Danish-Norwegian reformation in 1537. Our last registration dates from September 1531. With July 1438 as the first dating of a registered—and preserved—supplication from Nidaros, the material covers a period of a little less than a century.

Table 1 below shows the distribution of the 101 Nidaros/Crown and 44 Hebrides supplications according to diocese and categorization in the penitentiary registers.

The number of Nidaros supplications is by far too low to form any sort of basis for statistical observations. Table 1, thus, only shows how the Nidaros supplications were actually classified at the time when they were treated. The only tendency that can be identified with some certainty beyond that of randomness is the unusual representation of matrimonial and *defectus natalium* cases from the Hebrides.

A brief look at the distribution of the Norwegian supplications by year shows a rather even level of from 0–4 for each year throughout the period.³⁶ Only on some very few points are deviations from this

Table 1. Distribution of Supplications

Diocese	Nidaros & Crown	Oslo	Bergen	Stavanger	Hamar	Skálholt	Orkneys	Hebrides
<i>De diversis formis/ intitulatui</i>	12	12	6	4	2	1		
<i>De defectu natalium/illegitimis</i>	9	8	1	1	2	1	3	28
<i>De declaratoris</i>	3	1	1	4	1			
<i>De matrimonialibus</i>	2	1				5	1	10
<i>De uberiori</i>	2					2	1	3
<i>De promotis et promouendis</i>		1	1		1			
<i>De confessionalibus</i>	6	1				1		2
<i>De sententiis generalibus</i>			1					
<i>De altaribus portatilibus</i>		1						
No category	1	1						1
Total	35	26	10	9	6	10	5	44

³⁶ For a detailed survey, see Jørgensen and Saletnich, *Synder og Pavemakt*, p. 33.

general pattern discernable. The only single year clearly distinguished from the rest is the year 1500, with its eight supplications. This can only be explained by the fact that this year was a Holy Year and likely saw a marked increase in numbers of pilgrims to Rome. The tendency in the Norwegian material corresponds on this point very well to the material from the neighbouring archdiocese of Uppsala, which at the time included most of modern Sweden and Finland.³⁷

A peculiar feature requiring some further comments is the Jubilee year 1475, with only one Nidaros supplication. In the preceding year, 1474, as many as seven supplications were treated by the Penitentiary, and in the subsequent year, 1476, five were treated. All seven cases from 1474, however, date from November and December that year, i.e., only a few weeks before the beginning of the Jubilee year on Christmas Day, and all the seven supplications derive from the sees of Nidaros itself and Bergen. The most reasonable explanation is that the supplications were handed in, probably in one pile, by Archbishop Olav Trondsson himself in connection with his stay in Rome the very same autumn. Together with the *electus* to Bergen, Hans Teiste,³⁸ Olav came to Rome in the summer or early autumn of 1474, as we must suppose, with the intention of taking part in the celebration of the Jubilee year. However, Olav died in Rome on 25 November,³⁹ whereas Hans Teiste was ordained bishop of Bergen in Rome on 18 December.⁴⁰ We see no other reasonable explanation for the pattern than ascribing the delivery of the seven supplications to the archbishop himself and his retinue. Olav Trondsson's successor, his nephew Gaute Ivarsson, received his archiepiscopal ordination on the basis of papal provision in June 1475. Any penitentiary supplications related to this event have, however, not been found.⁴¹ Of the five registered supplications from 1476, four stem from Skálholt on Iceland. These were granted almost simultaneously in December and were most likely handed in to the Penitentiary together.

³⁷ K. Salonen, *The Penitentiary as a Well of Grace in the Late Middle Ages: The Example of the Province of Uppsala 1448–1527* (Helsinki, 2001), pp. 255, 281, 348, 362.

³⁸ Elected by the chapter in Bergen on 22 June 1474 in the presence of archbishop Olav.

³⁹ Buried in the Sant' Agostino church.

⁴⁰ *DN* 17, no. 683, pp. 1098–99; O. Kolsrud, "Erkebiskop Olav Thronndsson av Nidaros. 1459–1474," *Norvegia Sacra* (1924), 19–34.

⁴¹ The only registered supplication from the Jubilee year 1475 (Penitenzieria Apostolica [hereafter P.A.], vol. 23, fol. 271r) came from the diocese of Oslo and was granted on 2 August. It may have been handed in by archbishop Gaute, but there is no firm evidence of this.

Representation—Tip of the Iceberg

When discussing numbers, it is important to ask to what extent the registered cases form a representative selection of similar cases and to what extent we see here only the tip of the iceberg. While it is necessary to exercise caution, it seems that in the Norwegian material, we see, if we enter into the actual circumstances around the different supplications, that there are several elements that we may point out as occasional, such as resources of the suppliant, possibilities of transport to Rome, and general focus and pressure on the case. The cases of irregular clergymen were, for instance, more urgent than most of the matrimonial cases, because irregularity deprived the person of his living. In contrast, most couples applying for a dispensation for their illegitimate relationship could well live with their case unresolved for a while.

We have already made clear that the collection of Nidaros supplications is too small for making statistical tables—even though some comparative glimpses at material from other countries might be helpful. Thus, when searching for the historic value of the Norwegian texts, the primary focus must be on their content. And on this point the penitentiary supplications are indeed more valuable and informative than perhaps a first glance might indicate.

Names

As the penitentiary texts always give the name(s) of the suppliant(s), and often of other persons as well, these texts provide in the Norwegian material some 150 named individuals who are pulled into the light of research. Some of these are already known: a few well-known persons from the upper classes; with the help of these texts their *vitae* become more fully drawn up, sometimes on very crucial points. In the case of Iceland, for instance, which is the country of Europe with probably the most complete survey of named individuals within her borders at the time, we have found that 13 of the altogether 15 persons mentioned in the ten supplications from the diocese of Skálholt are already listed in *Íslenzkar Æviskrár*.⁴²

The cases under the column of *de matrimonialibus* cases are particularly informative about personal relations. The example of the supplication

⁴² *Íslenzkar Æviskrár: frá landnámstímum til ársloka 1940*, 6 vols, ed. P. E. Ólason (Reykjavík, 1948–76).

from the nobleman Arild Kane and his wife Ingjerd Erlendsdotter, widow of Olav Guttormsson, a member of the king's council, for a dispensation for prohibited degrees of *affinitas* renders new information on the family relations between central political figures in Norway at the time.⁴³ Considering the enormous number of similar texts from all over Europe, one can imagine what a treasure of new knowledge on kinship can be found in these supplications.

These texts also give indications about the matrimonial customs with regard to the 2nd to 4th degrees of *consanguinitas* and *affinitas* as practised in the actual Norwegian setting, or that of other countries. An interesting difference between Norway and Iceland becomes discernable by the help of this material. In Iceland, all these supplications came from people who were already aware of their—consummated or not yet consummated—forbidden relations. In Norway, the majority of the petitioners state they were not aware. As seen in conjunction with other historical material, this supports the general idea of how small and perspicuous Icelandic society was at the time compared to that of Norway. In canon law, the question of awareness versus ignorance was of importance. In the case of awareness, an absolution for the deliberately committed sin was required. In the case of ignorance, a dispensation was sufficient, because the couple at the time their relationship was contracted did not know that they were committing a sin.

Narratives of Actual Events

When looking at the contents of the penitentiary supplications, there is no doubt that the *de declaratoriis* texts present themselves as some of the most informative and interesting ones. These texts, together with some cases under the *de diversis formis* group, are generally long, up to three folios, and with longer narrative sections as their most substantial part. The Norwegian material seems here, not surprisingly, to be fully in line with that from other countries, since the standards for these texts were set in Rome and not in the local communities. But with the low number of such Norwegian texts, i.e., only ten, all from the Norwegian

⁴³ P.A., vol. 34, fol. 18r; Jørgensen and Saletnich, *Synder og Pavemakt*, pp. 80, 148.

mainland,⁴⁴ it is quite easy to investigate and interpret different aspects of their contents.

The particular format of this group of supplications provides in the narratives shorter or longer and often very detailed and colourful glimpses into concrete life episodes of the persons involved. If not unique, such actual descriptions of the acts and doings of identifiable persons in something between daily-life and exceptional situations are quite rare amongst the already existing Norwegian texts from that age. The texts provide short zoomed-in snapshots of one, two, or a few more persons, in all our texts with a perpetrator and a victim as the main figures and with a clergyman in the former or in both of the two roles. The persons here, so to speak, step out of darkness into the light of history, stay there for a little while, and then they disappear again. But during the little while we see them, the picture can be quite sharp. Above all, the reader gets a description of the different aspects of the actual event that impelled the address to the Holy See: the rise and increase of a conflict, ending in violence or fatality. But these texts also add valuable pieces of information to our knowledge of a more general kind: knowledge about weapons, tools, clothing, means of transport, housing, food, and social customs. In a few cases, the Latin texts even render remnants of words from vernacular languages.

Canon Law and Indigenous Judicial Systems

Any more extensive and systematic studies of the status of canon law and other papal regulations in their relation to the different national law codes and practices in the cases of Norway and Iceland have not yet been made. For the actual period we do, however, know that the civil judicial system was indeed in operation. The *Diplomatarium Norvegicum* contains case after case treated by tribunals at different levels, such as disputes about wills and inheritance, rights to land, farming, fishing, etc., as well as different kinds of criminal cases.

When it comes to the ecclesiastical law and the so-called reserved cases, there are many circumstances of a political and practical nature to be taken into account. Our general impression is, however, that the

⁴⁴ No *de declaratoriis* cases have been found from Iceland, the Orkneys, and the Hebrides.

general right of the clergy to *privilegium fori* was very much in effect. But in Norway as elsewhere, one has to consider that the force of muscles and arms in many cases were more decisive than the power of tribunal decisions.

An interesting event in the case of Norway at the time was the National Council in Oslo in 1478, with King Christian I and all the Norwegian bishops present. In this meeting the council made an attempt to draw a demarcation line between the jurisdiction of king and Church, especially on the points of marriage, incest, adultery, and oaths/perjury. According to the council resolutions, cases of incest in 3rd and 4th degrees, as well as fornication and relations with concubines, should be irrelevant to the king and should come under the jurisdiction of the Church. Adultery or, as it was phrased, "breaking into another man's wedlock," as well as bigamy, were to be compensated half to the king and half to the Church. More serious cases of incest in 1st and 2nd degrees and fornication against nature should result in the perpetrators being declared outlaws, their estate being shared half and half between Church and king, and the king deciding whether the perpetrator should live or not.⁴⁵

An interesting case from the Norwegian supplications in the matter of incest in which we see an overlap between canon and civil law is a petition from the Stavanger layman Svein Igulsson, or Sweno Ygeldi as he is called in the penitentiary protocols. According to the registered petition, Svein had made himself guilty of repeated severe incest through intercourse with his own daughter. Because of this, the text states, he had been imprisoned for some period, obviously on the basis of verdicts from the civil tribunal. His supplication to the Penitentiary, thus, contains a petition for absolution for incest and adultery and a request for a dispensation to resume his matrimonial life with his wife and to yield and claim the normal matrimonial duties. His argument is that he considers himself too young to continue life without these goods.⁴⁶

⁴⁵ Absalon Taranger Norway and Grethe Authén Blom, *Norges gamle love anden række, 1388–1604*, 3 vols (Christiania, 1912–81), vol. 2, no. 166; L. Hamre, "Erkebispedømmet i Unionstiden," in *Norges nedgang—senmiddelalderen*, ed. A. Holmsen and J. Simensen (Oslo, 1979), pp. 196–97.

⁴⁶ See Jørgensen and Saletnich, *Synder og Pavemakt*, p. 159; P.A., vol. 24, fol. 108v.

*An Example From the Text Material—The Case of
Torgils Amundsson*

We have already mentioned that the longer texts under the *de declaratoris*, as well as some of those under the *de diversis formis* columns with their *narratio* sections, are especially valuable. In the Norwegian material we have several texts of this kind, of which the supplication from the Stavanger canon Torgils Amundsson, already referred to in the introduction, is a good example. First of all, the narrative of the chain of dramatic incidents is an exciting story in itself. But along the way, the text gives valuable small notes on patterns of social gatherings, heavy weapons being carried also at tables in allegedly friendly banquets, indirect indications of heavy drinking, clothing, and trivial reasons for disputes combined with tension over prestige and status.

Torgils Amundsson, a priest from the diocese of Stavanger, explains that when he once, namely on Wednesday the eighth of last February, dined quietly and peacefully with numerous other honest priests and laypeople, men and women in the house of the canons in the city of Stavanger on the dedication day of the of St Mary's Church, he happened to approach a neighbouring table and sat down next to a shoemaker whom he knew and was friends with. At that moment, a certain Olav Hoffmann who had his place on the other side of the shoemaker said offensive things to the above petitioner for no other reason than that he frequented a table at which no other priests were to be found. The petitioner responded he could sit wherever he wanted since he owned at least one wall of the house, whereupon Olav, by no means appeased, but rather adding evil to evil directed further offensive words toward the petitioner. The latter considered them in his mind and, since he expected to be treated badly and to be beaten by the said Olav, preferred anticipation to being anticipated. So he struck Olav lightly with a stone on the head. A certain companion of Olav, named Peter, became angry because of this and hit the petitioner with an iron war-hammer on his left side, ripping his threefold dress and drawing some blood. When the injured, who almost lost control over his senses, saw Olav running away, he pursued him, but could not catch him. He therefore returned to the house in which he encountered the above-mentioned Peter who had just hurt him. To defend himself and assuming that, this time, he would suffer even greater harm from the same and remembering well the previous injury inflicted, [the petitioner], unable to overcome those first impulses that are beyond human control, hit and wounded the said Peter, who, as he feared after the threats, was likely to kill him or at least strike him again. He hit him with a sword on the head, due to which blow and injury, or due to his own neglect or that of the doctors, Peter, according to God's will, died within five days.

Considering, however, Holy Father, that the petitioner was neither guilty in the said death in any fashion other than the one described, nor had he harboured any intention, and that he deeply regretted it—and continues to regret it—and that he wishes to serve in his orders and administer the holy mass, it is requested that you grant the petitioner that he be absolved from all ecclesiastical sentences and punishments he may have incurred because of the aforementioned, from the crime of homicide and related offences, that he, through divine grace, receive dispensation and, in spite of the aforementioned, be allowed to administer in his orders the services of the altar, finally, that he be eligible to obtain liberally and licitly whichever compatible ecclesiastical benefice might be given to him canonically in the future, everything to the contrary notwithstanding, by special and express mandate.

So be it *de speciali et expresse*, M[ercurius], bishop of Bagnorea, regent. Let the case be committed to Petrus Calahorra, penitentiary of His Sanctity, presently residing at the Roman Curia; so be it, M[ercurius], Rome, at Saint Peter, 4 July 1525.⁴⁷

If we cast a glance at the concluding phrases of the supplication, the imprint of a canon law scholar is clearly visible. Most likely we here see the pen stroke of one of the official apostolic proctors in Rome. These proctors were trained to know which buttons to press in order to make the case as favourable for the suppliant as possible. In cases like the one of Torgils, the petitioner could plead guilty or not guilty. If he had pleaded not guilty, his request would have been for a papal declaration to confirm his innocence, and it would be held up against possible accusations of guilt stated by people normally referred to as simple and ignorant. Torgils, however, pleads guilty, probably well knowing that an attempt to do otherwise might have foundered on the facts of the case being tried by his ordinary, i.e., his local bishop. What we see here, thus, is an example of a grant from the Holy See given on the condition that the local ordinary confirmed what the petitioner had stated in his supplication. But when admitting guilt, Torgils' most urgent need would be for an apostolic absolution, for only on the basis of such absolution he could obtain the dispensation needed to acquit himself of the irregularity that he had contracted through his crime.

In the argumentation, probably also drawn up by the help of the proctor, we find a series of mitigating circumstances, which at a first glance might seem unimportant but which were highly relevant to the regulations of canon law. During the process of the escalation of the

⁴⁷ P.A., vol. 73, fols 1135r–1136r. See transcribed Latin version in Jørgensen and Saletnich, *Synder og Pavenakt*, pp. 165–66.

case, Torgils' counterparts, Olav and Peter, are pointed out as the ones responsible for provoking the violence by offensive words and by adding evil to evil, whereas the petitioner's violent participation is excused by inability to "overcome those first impulses that are beyond human control." And as for the death of the victim himself, the letter raises doubt about the cause by pointing out neglect of the injured man or that of the doctors as possible reasons beyond the stroke of the sword itself. And in the formula-like section of the petition for grace, the letter settles that the petitioner was not guilty in any fashion other than the one described, that the felony had taken place without the intent of homicide, that the petitioner regrets his act, and that he houses a pious wish to continue to serve in his orders and administer at the altar.

The Torgils text quoted above is also most interesting on another point. Since it gives both the exact date of the criminal act and the date when the case was recorded in the Penitentiary office, this text supplies us with precise information on how long it *could* take to bring a penitentiary supplication from Norway to the pope. In this particular case, the entire course of events—the killing, the local treatment of the case, the drafting of a letter, the transport to Rome, the dealings with the proctor, and the handling of the case in the Penitentiary office—took place between 8 February and 4 July, i.e., a span of a little less than five months. When considering the distance from Norway to Italy and the means of transport available, there should have been no reason for Torgils to complain. From other cases, we know that it could take more time, but the overall picture shows that the process of bringing a case from Scandinavia to the curia in Rome took something between a few months and two years.

Concluding Remarks

By using one of the Norwegian supplications to the Apostolic Penitentiary as a point of reference, we have in this article made an attempt to give a brief presentation of the penitentiary petitions from the Norwegian Church province of Nidaros. From one point of view, one may regret the low number of approximately 150 supplications from this area, but from another viewpoint, this limited amount of texts allows us to maintain a quite detailed overview of the different texts, not only as to their categorization but also as to their contents. And as these texts have only been presented to the public for the first time in April 2004, they also represent a most virginal ground for further research.

AT HERESY'S DOOR:
BORROMEO, PENANCE, AND CONFSSIONAL
BOUNDARIES IN EARLY MODERN EUROPE*

Wietse de Boer

Now we will descend into the crypt, under the grand altar of Milan Cathedral, and receive an impressive sermon from lips that have been silent and hands that have been gestureless for three hundred years.... You that worship the vanities of earth—you that long for worldly honor, worldly wealth, worldly fame—behold their worth! (M. Twain, 1869)¹

Since it is certain...that God brings about heretical disputes and arguments...to clarify the truth of the faith, who can doubt that he also stirs up troubles in the Church to establish discipline, which is the first flower of the faith and the grace that goes with it? In this regard, St Charles has surmounted all the obstacles he faced...(A. Arnould, 1643)²

Among several forms of penitential practice that vied for prominence in early modern Catholicism, one rested on the notion that sacramental confession should be instrumental in maintaining social order. It was particularly the powerful archbishop of Milan, Carlo Borromeo (1564–84), who promoted this notion as part of his diocesan reforms. Borromeo proposed a form of social discipline that combined a deep penitential ethos with institutional enforcement. By integrating the

* Many thanks to Renée Baernstein, James Farr, Abigail Firey, John O'Malley, and the anonymous reviewer of this volume for having read and commented on a draft of this chapter. I am equally grateful for the insights offered by Adriano Prosperi and the participants in his seminar at the Scuola Normale Superiore di Pisa, to whom I presented this research in November 2007; I have acknowledged specific debts in the footnotes below.

¹ Mark Twain, *The Innocents Abroad, or The New Pilgrims Progress*, in idem, *The Innocents Abroad. Roughing It* (New York, 1984), p. 140.

² *Car puis qu'il est certain par le consentement de tous les Peres, que Dieu fait naistre les disputes et les contentions des heretiques, comme dit souvent Saint Augustin, pour éclaircir la verité de la foy: qui peut douter qu'il ne suscite aussi des troubles dans l'Eglise pour établir la discipline, qui est la premiere fleur naissante de la foy et de la grace qui l'accompagne? Saint Charles a passé par dessus tous les obstacles qui se sont presentez...* (Antoine Arnould, *De la fréquente communion où les sentimens des Pères, des Papes et des Conciles, touchant l'usage des sacrements de pénitence et d'eucharistie, sont fidèlement exposez...* [1643], 7th ed. [Paris, 1683], p. 51). Here and throughout this chapter, all translations are mine.

public and private spheres, he attempted to create a new, purified confessional order capable of countering the religious crisis of the time.

This model, developed by a bishop who was soon canonized (1610), proved highly influential in various places and at different times in later Catholicism. It is possible to reconstruct the geography, chronology, and modalities of this reception by tracing the publication history of St Charles' texts on penance. Here we will follow this history from 16th-century Milan to Flanders, through 17th-century France, into 18th-century Italy, and on to Austria, Spain, and beyond. Since legal and political obstacles often stood in the way of a wholesale implementation of the decrees of Trent, Borromeo's blueprint of reform on the ground was often far more effective. Borromeo himself sensed this when he urged his colleague of Toulouse, Cardinal François de Joyeuse, "to make sure that what has not been promulgated and announced officially is [executed] truly and effectively."³ For the historian, Borromeo's returns may likewise be a gauge of critical trends in early modern Catholicism. Of course, Borromeo's program was not without competition; in fact, we will see that it tended to re-emerge in dynamic opposition to others. In particular, this tale often provides an indirect commentary on the vicissitudes of the early modern Jesuits.

Nevertheless, Borromeo's work on penance represents arguably "the most important contribution to the practice of the subject made during the Counter-Reformation."⁴ It is less clear what this contribution was. Existing interpretations have focused on Borromeo's place within Catholic spirituality, discussing the degree of his rigourism in the confessional or the modernity of his pastoral methods.⁵ Recent 16th-century

³ Letter of Borromeo to Cardinal De Joyeuse, cited by Bernard Plongeron, "Unità tridentina e diversità francese: filoromani, giansenisti, gallicani e costituzionali," in *I tempi del Concilio: Religione, cultura e società nell'Europa tridentina*, ed. Cesare Mozzarelli and Danilo Zardin (Rome, 1997), pp. 145–70, at 148.

⁴ John Bossy, "The Social History of Confession," *Transactions of the Royal Historical Society*, 5th series, 25 (1975), 21–38, at 29.

⁵ Roger Mols has stressed Borromeo's modernity, in "Saint Charles Borromée, pionnier de la pastorale moderne," *Nouvelle Revue Théologique* 29 (1957), 600–22 and 715–47; Jean Delumeau has cited his inexperience and his return to the severity of ancient penance, in *L'aveu et le pardon. Les difficultés de la confession, XIII^e–XVIII^e siècle* (Paris, 1990), pp. 79–80; Marcel Bernos has defended him against the charge of rigourism, in "Saint Charles Borromée et ses 'Instructions aux confesseurs.' Une lecture rigoriste par le clergé français (XVI^e–XIX^e siècle)," in *Pratiques de la confession. Des pères du désert à Vatican II. Quinze études d'histoire*, ed. Groupe de la Bussière (Paris, 1983), pp. 185–200; and John Bossy has described Borromeo as an innovator *malgré soi*, as one who attempted an

studies allow us to put Borromeo's legacy in a broader context. Scholars have increasingly stressed the centrality of penance as a Reformation battleground on which vital issues of theology, authority, and social mores were fought out.⁶ Borromeo's penitential program developed precisely out of such concerns: it drew on traditional canon law and theology to develop a timely institutional response to the confessional crisis of the day. This response was clearly rigourist in nature, and it was to remain so in its later incarnations. These incarnations suggest furthermore that penance remained a decisive issue for Europe's religious development at least until the late-18th century, and that St Charles' shadow came to loom large over it.

Yet his influence was never the fruit of simple or passive reception: those who cultivated Borromeo's published works made them serviceable to new circumstances and contexts. Nor were such acts of appropriation arbitrary or accidental: the Lombard saint tended to reappear at the frontiers of socio-religious division, both within the Catholic world and at its borders with other confessions.⁷ Typically, then, these returns were justified by the spectre of heresy—that is, the perception, or even the construction, of a deadly enemy of the faith. Calls for moral rigour and a purified social order were thus combined with a reaffirmation of orthodoxy and a compact confessional identity. By the end of the Ancien Regime, Borromean penitentialism was part and parcel of the Church's disciplinary arsenal across Catholic Europe.

"archaeological revival of the pre-scholastic penitential tradition" but instead helped to create modern confession, in "The Social History," p. 29.

⁶ Amy Nelson Burnett, *The Yoke of Christ: Martin Bucer and Christian Discipline* (Kirkville, Mo., 1994); Adriano Prosperi, *Tribunali della coscienza. Inquisitori, confessori, missionari* (Turin, 1996); W. David Myers, "Poor, Sinning Folk." *Confession and Conscience in Counter-Reformation Germany* (Ithaca, N.Y., 1996); *Penitence in the Age of Reformations*, ed. Katharine Jackson Lualdi and Anne T. Thayer (Aldershot, 2000); Elena Brambilla, *Alle origini del Sant'Uffizio. Penitenza, confessione e giustizia spirituale dal medioevo al XVI secolo* (Bologna, 2000); Wietse de Boer, *The Conquest of the Soul: Confession, Discipline and Public Order in Counter-Reformation Milan* (Leiden, 2001); Ilse Tobias, *Die Beichte in den Flugschriften der frühen Reformationszeit* (Frankfurt am Main and New York, 2002); Ronald K. Rittgers, *The Reformation of the Keys: Confession, Conscience, and Authority in Sixteenth-Century Germany* (Cambridge, Mass., 2004).

⁷ In considering this issue, I have benefited from a 1969 essay by Fredrik Barth, republished as "Ethnic Groups and Boundaries," in *Theories of Ethnicity. A Classical Reader*, ed. Werner Sollors (New York, 1996), pp. 294–324. I owe the reference to Thomas Sizgorich.

I

1. When Carlo Borromeo was canonized in 1610, Giovanni Pietro Giussani took the opportunity to look back on the new saint's accomplishments. One of Borromeo's main concerns, Giussani suggested in an authoritative biography, had been "the matter of the Catholic faith, which had long been neglected, almost ignored, particularly in this province of Milan." The archbishop was moved to action both by "the dangers that loomed because of the close vicinity of heretics, and [by] the depraved, corrupt habits of clergy and people, which are the particular breeding ground and principal cause of heresy."⁸

In associating heresy and moral disorder, Giussani put his finger on a concern foremost to the minds of Church authorities of the Cinquecento. Historians have taken a long time to appreciate its importance. Those interested in the pastoral reforms put in place by Borromeo's generation of post-Tridentine bishops tended to see them as a manifestation of "Catholic reform," part of a tradition distinct from, and even preceding, the Protestant Reformation. To be sure, the Tridentine movement also responded directly to the Protestant challenge, but (in Hubert Jedin's famous interpretation) the ongoing tradition of Catholic reform could not be subsumed under, let alone reduced to, this "Counter-Reformation." Yet, as Giussani suggests, contemporaries viewed the two phenomena as intimately intertwined. The implicit lesson is that we would do well to ask how the heretical challenge conditioned the social reforms enacted after Trent, above and beyond the obvious eagerness to repress heresy and instil orthodoxy. In other words, we are advised to consider the Tridentine reforms in northern Italy as part of a confessionalizing process—as the defensive consolidation of a society threatened by the proximity of confessional enemies.⁹

This perspective proves especially helpful in understanding trends in penitential practice. Well before Borromeo the centrality of penance

⁸ Gio. Pietro Giussani, *Vita di S. Carlo Borromeo, prete Cardinale del titolo di Santa Prassede arcivescovo di Milano* (Rome, 1610), p. 73. On the author, see M. Ceresa and F. Pignatti, "Giussani, Giovan Pietro," in Istituto della Enciclopedia italiana, *Dizionario biografico degli Italiani* 57 (2001), 157–61.

⁹ In this chapter's first part, a prelude to the main argument, I draw on the research I have presented in more detail in *The Conquest of the Soul*. For a historiographical discussion, see my "Social Discipline in Italy: Peregrinations of a Historical Paradigm," *Archive for Reformation History/Archiv für Reformationsgeschichte* 94 (2003), 294–307.

to the Reformation conflict had been evident. Starting with his *Ninety-five Theses*, of course, Luther had launched a frontal attack against the imposing edifice in which the medieval Church had ensconced the penitential ideal: “the entire life of believers,” according to the first of the *Theses*, should be “one of repentance.”¹⁰ Luther was not alone in advocating an earnest penitentialism devoid of routine and compromise. In Italy, the notion of penance as a radical conversion had taken root in devotional circles, and various religious leaders could be heard disapproving of inept confessors and lukewarm confessions. The Veronese bishop Gian Matteo Giberti decried the havoc wrought by confessors who were “ignorant, greedy, without charity, without zeal, and inclined to examine their penitents’ purse rather than their conscience”; and the influential Dominican Battista da Crema inveighed against a laxity that produced “such a lack of betterment among the laity.”¹¹ But these criticisms by avowed anti-Lutherans were aimed at the practice, not the doctrine, of penance. In fact, Catholic authorities maintained, Luther’s rejection of medieval sacramental theology had undermined one of the essential functions of confession—discipline. In 1523, Luther’s opponent Johannes Eck had proclaimed the sacrament to be “the nerve of our religion and of Christian discipline,” and this defence was to echo through Catholic apologetics of the entire 16th century. As the confessional conflict sharpened, Church leaders added a new emphasis, hammering on discipline as a vital concern for society, not merely the individual. The *Roman Catechism* (1566) promoted confession not only for its spiritual value but also because of its “usefulness...especially for social life and its cohesion.”¹² Implicit in this authoritative statement was the assumption that confession was all the more powerful and essential in that it was capable of bridging the divide between the private and the public domains. Not only did the power of the keys, vested in the confessor, afford the Church an incomparable chance to act on the conscience but also it allowed the Church to pursue political unity and social discipline. This function, while not absent during the Middle Ages, gained extraordinary urgency during the post-Reformation

¹⁰ *Luther’s Works*, vol. 31, trans. C. M. Jacobs, rev. by Harold J. Grimm (Philadelphia, 1957), p. 25.

¹¹ *Jo. Matthaei Giberti... Opera* (Hostiliae, 1740), p. 97; *Battista da Crema, Aperta verità [...] da lui corretta et emendata* (1523; Venice, 1544), fol. 58r; harsh criticism of Luther is on fols 74v–75r.

¹² *Catechismus ex decreto concilii Tridentini ad Parochos Pii V Pont. Max. iussu editus* (Rome, 1566), p. 173.

era. Giovanni Botero, who had spent part of his young years at Borromeo's court, saw the political implications of this argument for the confessional era: political cohesion depended on the prince's ability to bind the minds and hearts of his subjects.¹³

There is no question that Carlo Borromeo would have endorsed Botero's argument, if it had not been for his principled unwillingness to cede control of religion to any secular authority. In his hands it was the territorial church—the archbishopric of Milan—which took the initiative to defend and reinforce confessional integrity with the tools of religious governance. Confession played a central role in this project.

2. "First, as for the confessors, I have decided to have some rules compiled that are necessary and important for the office of confessor." Thus, on 13 January 1565, the very beginning of his episcopate, Carlo Borromeo expressed his concern with the conduct of confession.¹⁴ It took nine years before these "rules" found their way into print, as the *Avvertenze di monsignore illustrissimo cardinale Borromeo, arcivescovo di Milano, ai confessori nella città et diocesi sua*.¹⁵ The *Avvertenze* (as we will abbreviate the title) form the seminal text that allows us to trace the genesis and influence of Borromeo's program of penance.¹⁶

The *Avvertenze* occupy a distinct place within the vast literature that was available at the time to assist confessors and penitents. The bulk of that literature—such as the classic *Confessionale* "*Defecerunt*" by Antoninus of Florence (1389–1459) and the *Summula peccatorum* by Cardinal Cajetan (1469–1534)—was a product of the professional expertise of the late medieval confessors *par excellence*—the mendicant friars.¹⁷ In contrast,

¹³ Giovanni Botero, *The Reason of State & The Greatness of Cities* (New Haven, 1956), pp. 66–67; see also Robert Bireley, *The Counter-Reformation Prince: Anti-Machiavellianism or Catholic Statecraft in Early Modern Europe* (Chapel Hill and London, 1990), pp. 61–62.

¹⁴ Agostino Sala, *Documenti circa la vita e le gesta di S. Carlo Borromeo*, 3 vols (Milan, 1857–61), 3:330.

¹⁵ *Avvertenze... ai confessori...* (Milan, 1574). In the following pages we will use the edition in *Acta Ecclesiae Mediolanensis*, ed. Achille Ratti, vols. 2–4 (Milan, 1890–96) [henceforth, *AEM*] 2:1870–99.

¹⁶ Additional sources, here not considered, include numerous conciliar and synodal decrees and ad-hoc edicts and instructions collected in Borromeo's *Acta Ecclesiae Mediolanensis* (1st ed., Milan, 1582). A broader study of Borromeo's reception, based on the diffusion of the *Acta*, could start with Enrico Cattaneo, "La singolare fortuna degli 'Acta Ecclesiae Mediolanensis'," *La Scuola cattolica* 111 (1983), 191–217.

¹⁷ Pierre Michaud-Quantin, *Sommes de casuistique et manuels de confession au moyen-âge (XII^e–XVI^e siècles)* (Leuven, Lille, and Montréal, 1962); Thomas N. Tentler, *Sin and Confession on the Eve of the Reformation* (Princeton, 1977); Miriam Turrini, *La coscienza e le leggi. Morale e diritto nei testi per la confessione della prima Età moderna* (Bologna, 1991).

the *Avvertenze* presented select and pragmatic directives of a bishop to the confessors working within his jurisdiction and henceforth (according to the decrees of Trent) dependent on his express approval. The instructions drew both on the medieval tradition of synodal or episcopal legislation and on a new genre of manuals for priests that had emerged in the early Cinquecento in response to deep worries about the quality of pastoral care.¹⁸ Borromeo multiplied such instructions: along with those for confessors, he issued *avvertenze* on confirmation, the Eucharist, and the Mass; on feasts, offices and funerals; and so on. Some returned later, repackaged and translated into Latin, in the *Rituale ambrosianum*, but it is their vernacular versions that best show the original intent to tailor diocesan publications to a precise task, occasion, and user.¹⁹

The *Avvertenze* for confessors are a case in point. The text grew out of Borromeo's first provincial council (1565), whose brief decrees on penance Borromeo had printed on the newly introduced approval form for confessors.²⁰ The document thus represented the link between the bishop's approval and the obedience that the licenced priest owed to his instructions. It carried the clear message that the confessor was to be an executor of episcopal policy. A few years later, after another provincial council had required all Lombard dioceses to introduce such permits-with-instruction, the Milanese curia started work on a revised edition of its own.²¹ The resulting *Avvertenze* were issued in 1574 and were again printed on the licence form, by now expanded to a large sheet (96 by 45 cm). Soon, no doubt because this format proved too cumbersome, it also brought out a bound 16° edition. In this way the *Avvertenze* quickly outgrew their original dress and became a booklet.

When the *Avvertenze* first appeared, in the spring of 1574, its immediate purpose was clearly to serve in the upcoming Easter confessions. Hence, no doubt, the special attention that Lent received in the *Avvertenze*, particularly in the *Aggiunta per i curati* (addendum for parish

¹⁸ Adriano Prosperi, "Di alcuni testi per il clero nell'Italia del primo Cinquecento," *Critica storica* 7 (1968), 137–68.

¹⁹ For the vernacular versions, see *AEM*, 2:1771ff. The Latin *rituale* was published as *Sacramentale Ambrosianum*... (Milan, 1589).

²⁰ *Avvertenze per chi haverà d'amministrare il sacramento della penitenza in questa città, et diocesi di Milano* (copy at Biblioteca del Capitolo Metropolitano, Milan; to be dated 1565–69); a modern edition (without approval form) is in *AEM*, 2:1899–1901. Brief guidelines were also published for regular confessors: *Avvertenze per i reverendi confessori, che si desidera siano da i superiori di ciascun convento fatte osservare* (*AEM*, 2:1901–03).

²¹ *AEM*, 2:247 (Third Provincial Council, 1573).

priests). The Easter confession, of course, had long been synonymous with the annual confession that the Fourth Lateran Council (1215) required of all adult Christians. Recently, the relevant decree, *Omnis utriusque sexus*, had become a central target of the Protestant attack against the sacrament of penance. And when the Tridentine fathers responded by emphatically confirming *Omnis utriusque sexus*, this meant that henceforth the fulfilment of the Easter duty was more than ever a sign of orthodoxy. Under the circumstances, it became a matter of urgency for diocesan authorities to monitor it. The *Avvertenze* described and prescribed a bureaucratic method to do just this. All penitents were to receive from their confessor a certificate of confession, called *fede* or *bollettino*. The *fede* became, most literally, their ticket of admission to the communion table. In turn, it allowed the curate to check their names against the parish register and, once Easter was past, to identify and report the negligent. In case of doubt he could verify the confessor's credentials by consulting yet another document: the official list of approved confessors. To minimize fraud even further, confessors were advised to keep a personal record of their penitents. Separate instructions on communion and parish registers, also published in 1574, were to make the system of surveillance watertight.²²

In this way the *Avvertenze* contributed to a diocesan—hence territorially based—network of control over clergy and laity alike. Its role in guarding orthodoxy was anything but theoretical in a border area like Lombardy: in fact, the Lenten observance became a litmus test to monitor the religious observance of merchants, soldiers and other itinerants arriving or returning from across the Alps. Even more importantly, the bishop's confessors became direct collaborators in the fight against heresy. Following a decree of Pope Paul IV (1559), the Inquisition required that penitents report all knowledge they might have of heretical activities or publications to the local Inquisition before they could be absolved in the confessional. The decree was duly noted in the *Avvertenze* and received extra authority by the text's joint *imprimatur* of the bishop and the Milanese Inquisitor.²³

²² *Avvertenze...ai curati della città et diocesi sua per amministrare il santissimo sacramento dell'Eucharestia in chiesa* (Milan, 1574); also in *AEM*, 2:1775–94. *Avvertenze a ciascun curato per fare i libri del stato delle sue anime* (Milan, 1574); also in *AEM*, 2:1934–38.

²³ On the vital links between confession and Inquisition, see Adriano Prosperi, "Beichtväter und Inquisition im 16. Jahrhundert," in *Die katholische Konfessionalisierung*, ed. Wolfgang Reinhard and Heinz Schilling (Heidelberg, 1995), pp. 125–34; idem, *Tribunali della coscienza*; Giovanni Romeo, *Ricerche su confessione dei peccati e Inquisizione*

This was by no means the first time that confession served as a bulwark against heresy. In fact, the heresies of the Middle Ages had left a lasting inquisitorial imprint on the Lateran sacrament.²⁴ Yet the disintegration of 16th-century Christianity greatly reinforced and expanded this function. Less perceptibly, but no less importantly, confessional integrity was also an urgent motivation behind the moral reforms that are central to the *Avvertenze*. Public morality and orthodoxy, as we will see, were intimately intertwined.

3. The *Avvertenze* declared their objective in the first sentence—that the sacrament of penance would achieve in penitents “the true betterment of life” [*la vera emendatione della vita*].²⁵ In this way, Borromeo echoed the radical understanding of penance as a deep conversion, the beginning of a new life, which had become prominent as well as suspect during the early Reformation. As we have seen, this aspiration had been interpreted both as a crucial Lutheran error and an essential condition for revitalizing Catholic piety. But it was only after Trent had settled important matters of doctrine and authority that a bishop like Borromeo could re-propose a similar form of penitentialism—this time with the guarantee of close ecclesiastical supervision. Penance was to go hand in hand with social discipline.

Thus the earlier complaints about the ineffectiveness of confession resurfaced and moved to the centre of Borromeo’s concerns, “since wherever we look we see so little betterment in those who have frequented this sacrament for so many years.”²⁶ Laxism was the deepest problem, Borromeo was to repeat later, whether it was caused by flattery, fear, gentleness, paternal affection, or plain negligence.²⁷ The *Avvertenze* meant to provide confessors with tools to reverse this situation.

nell'Italia del Cinquecento (Naples, 1997); Brambilla, *Alle origini del Sant'Uffizio*. Of course, the relations between bishops and inquisitors were often competitive. The experience of Pedro Guerrero, archbishop of Granada, shows that episcopal uses of confessors to combat heresy could actually circumvent the inquisitorial process; see Stefania Pastore, “Roma, il Concilio di Trento, la nuova Inquisizione: Alcune considerazioni sui rapporti tra vescovi e inquisitori nella Spagna del Cinquecento,” in *L'Inquisizione e gli storici: un cantiere aperto* (Rome, 2000), pp. 109–46, at 134–37 (with my thanks to the author for drawing my attention to the case).

²⁴ Jacques Chiffolleau, “Sur la pratique et la conjoncture de l’aveu judiciaire en France du XIII^e au XV^e siècle,” in *L’aveu. Antiquité et Moyen-Âge* (Rome, 1986), 341–80.

²⁵ *AEM*, 2:1870.

²⁶ *S. Caroli Borromei S.R.E. Cardinalis Archiepiscopi Mediolani Homiliae...*, ed. Josephus Antonius Saxius, 5 vols. (Milan, 1747–48), 4:3–5.

²⁷ *S. Caroli...Homiliae*, 4:5–7.

They could (and should) assess penitents' sincerity by scrutinizing their demeanour and spiritual preparedness. They had to pressure their charges by "turn[ing] the fields of the conscience . . . with the ploughs of interrogation."²⁸ They had to impress their penitents with the severity of the ancient Church; and it was for this reason that in 1573 Borromeo had published the *Canones poenitentiales*, a selection of penances derived from early medieval *libri paenitentiales*.²⁹ The point was not so much to reintroduce historic practices as to hold them up as a terrifying lesson for the penitent and, thus, induce the latter to accept the penance actually imposed.³⁰ The confessors' ultimate instrument of discipline was judicial: they should turn away unrepentant, obstinate sinners without absolution. This use of the power of the keys came to occupy more than a quarter of the *Avvertenze*.

We can trace this legal approach (like other elements of Borromeo's reforms) to medieval penitential practice, but its idiosyncratic features can be understood only within the context of the 16th-century confessional conflict. On the one hand (as we have seen), confession became an integral part of the fight against heresy. On the other, it came to serve a program of social reform whose depth and breadth had few, if any, precedents. The philosophy implicit in Borromeo's *Avvertenze* could be summarized as follows. Confessors had to fight not merely sin but also the environments in which it tended to thrive. These *occasions of sin*—a term adapted from a long moral-theological tradition—were circumstances that made the repetition of sin likely, if not certain, and thus turned the culprit into a habitual sinner. This was of course the problem that the *Avvertenze* meant to correct and that justified the harshest sanctions on the part of the confessor. Among the occasions of sin, the *Avvertenze* mentioned not only universal targets of moral disapproval, like gaming, concubinage, and taverns, but most professions as well. The military, the law courts, and the world of trade and commerce all favoured their own kind of sinfulness, ranging from blasphemy to perjury to usury to fraud.

Charged with the fight against these occasions of sin, confessors became reformers of the social order. This effort overlapped with a much broader devotional project—the consistent attempt to juxtapose,

²⁸ *S. Caroli . . . Homiliae*, 4:7.

²⁹ The text was published as an appendix in *Decreta edita et promulgata in synodo dioecessana prima mediolanensi . . .* (Milan, 1573). The 1573 canons were considerably revised for the *Sacramentale Ambrosianum* (*AEM*, 2:1325–47).

³⁰ *AEM*, 2:1889.

oppose, or substitute customary forms of secular sociability with pious exercises, private but especially public. Significantly, Borromeo's ritual offensive took shape in the same period as the *Avvertenze*. On 21 November 1573, the archbishop urged the faithful to prepare for Christmas through confession and communion, fasts, and works of charity, and by abstaining from "those games, debaucheries, excesses, profanities and so many sins that usually accompany them."³¹ In February of 1574 there followed a campaign to reform and intensify Lent, in particular by extending the commemoration of Christ's passion backwards by several weeks. The week of Septuagesima was devoted to "fasts, prayers, visiting churches, attending sermons and sacred lectures" as well as "frequenting confessions."³² The target was clearly the traditional celebration of Carnival. In fact, these devotional exercises were meant to "divert [the people] from those vanities and occasions of sin into which diabolical corruption draws them more easily these days."³³

In short, participation in confession became an important marker of piety and defiance of the world. A long penitential season, interspersed with confessions, was to replace the superficiality of the current annual confession immediately before Easter. One measure expresses Borromeo's antithetical view of public morality most poignantly. The reintroduction of public penance had been decided by the Council of Trent but was a perfect fit in the Borromean reform. Public expiation for public sin was in fact motivated by the principle that a sin committed in public was not only reprehensible in its own right but had created public harm—an occasion of sin—that required an equally public correction.

4. Borromeo's program of discipline was thus grafted firmly onto the existing Easter traditions. Yet its deep penitentialism went beyond, and potentially subverted, the cyclical nature of the traditional Church calendar. The attempted extension of the Lenten period was only the beginning. In the *Avvertenze*, Borromeo suggested that the faithful gradually increase the frequency of confessions to once a week, and elsewhere he even urged them to confess their sins as soon as they had committed them.³⁴ This advice is indicative of how close Borromeo came to Luther—in spirit, albeit not in doctrine—in the conviction

³¹ *Lettera sopra l'Advento*, *AEM*, 3:481–87, at 486.

³² *Lettera sopra la Settuagesima*, 1 February 1574, *AEM*, 3:487–95, at 492.

³³ Letter to the *vicarii foranei*, 1 February 1574, *AEM*, 3:1193–94, at 1194.

³⁴ *Avvertenze... ai confessori*, *AEM*, 2:1892; *Ricordi... per il vivere christiano* (1577), *AEM*, 3:652–53.

that “the entire life of believers” should be “one of repentance.” More direct was his affinity with Jesuit devotional practice—itsself the fruit of early Reformation spirituality—which led to his close collaboration with the first Jesuit mission in Milan during the 1560s. Not surprisingly, the archbishop integrated important elements of Jesuit penitential practice—frequent confession, general confession, and spiritual direction—into his diocesan rules for penance.³⁵

Yet this wedding was an uneasy one, as the program’s reception and Borromeo’s later relations with the Jesuits suggest. During the 1570s it became increasingly clear what Borromeo’s priorities were, and how they were perceived in the city. Opposition focused particularly on the archbishop’s battle against occasions of sin, and on his use of judicial weapons to fight it. Toward the end of the decade pent-up resentment erupted into a major conflict over Carnival, which pitted Milan’s civic authorities against the Church leadership. At this point Jesuit reservations about the archbishop became similarly public: Giulio Mazzarino, a noted Jesuit preacher, criticized Borromeo’s legalistic confession policies from the pulpit and had to explain his opinions in two Inquisition trials. Such policies, Mazzarino declared, were unjustifiable if they threw “penitents into desperation, confessors into confusion, and the city into scandal.”³⁶ After the civic complaints had reached papal Rome and the Spanish court of Philip II, Borromeo himself felt compelled to defend his record. His fight against public immorality, he stated in a letter to Philip II’s confessor, was a matter of the highest urgency, since occasions of sin “seem to be the very doors of heresy, and therefore it is necessary to close them with every diligence and guard them with due care.”³⁷

Borromeo thus articulated, and rhetorically exploited, the vital connection between public order and orthodoxy that we are concerned with here. This connection, as the following pages will show, is also essential for understanding the later uses of his program of penitential discipline.

³⁵ John W. O’Malley, *The First Jesuits* (Cambridge, Mass., 1993), pp. 87–89, 137–40; Myers, “Poor, Sinning Folk,” pp. 144–84.

³⁶ Flavio Rurale, *I gesuiti a Milano. Religione e politica nel secondo Cinquecento* (Rome, 1992), p. 270 n (and generally on the Mazzarino affair, pp. 217–81).

³⁷ Borromeo’s answer to Diego de Chaves, Fall 1580 (published in Sala, *Documenti*, 2:90–94, at 93).

II

1. Borromeo's legacy was, of course, profoundly conditioned by the sanctity officially conferred on him in 1610. Yet this canonization was more problematic than his later status as canonical Counter-Reformation saint might lead us to believe. The memory of Borromeo's life became contested within a decade after his death, when a former aid, Carlo Bascapè, was unable to publish his extensive biography of the archbishop either in Milan or in Rome. There Bascapè's descriptions of Borromeo's clashes with the Milanese government and other civic and ecclesiastical constituencies proved politically unacceptable. Ultimately, the biographer had his book published in Germany, as if it were (in his own bitter words) "a heretical or scandalous work."³⁸ In the early 1600s, a growing Milanese cult of Borromeo, and a newly found accord between state and Church, created the opportunity for a canonization process. But even then, memory resisted the sharp edges of the past. As Giuseppe Alberigo has argued, the prevailing line within the Roman curia, represented by the powerful Jesuit Roberto Bellarmino, promoted Borromeo as a model of personal piety and asceticism rather than episcopal governance.³⁹ Even aside from the official Roman positions on Borromeo's sanctity, there is little doubt that over time the popular cult of St Charles developed around his virtues rather than the rapidly fading specifics of his life.⁴⁰ This is the tradition encountered by an "innocent abroad" like Mark Twain, three centuries later, when he visited Milan's Duomo and saw "the last resting-place of a good man,

³⁸ Carlo Bascapè, *De vita et rebus gestis Caroli Borromaei* (Ingolstadt, 1592). Bascapè's remark is cited in Giuseppe Alberigo, "Carlo Borromeo come modello di vescovo nella Chiesa post-Tridentina," *Rivista storica italiana* 79 (1967), 1031–52, at 1045. See also Maria Franca Mellano and Franco Molinari, "La 'Vita di S. Carlo' del Bascapè. Vicende della pubblicazione," *Ricerche di storia sociale e religiosa* 21–22 (1982), 125–89.

³⁹ Alberigo, "Carlo Borromeo come modello di vescovo"; for a critical correction, however, see Angelo Turchini, "Roberto Bellarmino e il processo di canonizzazione di S. Carlo Borromeo," in *Bellarmino e la Controriforma. Atti del simposio internazionale di studi, Sora 15–18 ottobre 1986* (Sora, 1990), pp. 385–401; on the circumstances of the canonization, see also Miguel Gotor, *I beati del papa: santità, inquisizione e obbedienza in età moderna* (Florence, 2002), pp. 65–78. For a more "consensual" interpretation, see Simon Ditchfield, "San Carlo and the Cult of the Saints," *Studia Borromaeica* 20 (2006), 145–54.

⁴⁰ Angelo Turchini, *La fabbrica di un santo. Il processo di canonizzazione di Carlo Borromeo e la Controriforma* (Casale Monferrato, 1984); Wietse de Boer, "Carlo Borromeo, heilige tussen tekst en praktijk," in *Heiligen of helden. Opstellen voor Willem Frijhoff*, ed. Joris van Eijnatten, Fred van Lieburg, and Hans de Waardt (Amsterdam, 2007), pp. 144–58. A critical study of the cult of St Charles, in Italy and outside, is lacking.

a warm-hearted, unselfish man; a man whose whole life was given to succoring the poor, encouraging the faint-hearted, visiting the sick; in relieving distress, whenever and wherever he found it.”⁴¹

Twain seemed unaware of St Charles’s controversial past as a bishop; and little did he realize that the saint’s episcopal persona had nevertheless been revived numerous times to intervene at critical moments, well beyond the confines of his Milanese archdiocese, across Catholic Europe. Borromeo had in fact become a “confessional saint.”⁴²

2. In 1586, within two years after Carlo Borromeo’s death, the Antwerp publisher Plantin published a set of his “instructions for pastors” [*Pastorum instructiones*].⁴³ They included guidelines for preaching, the hearing of confessions, and the administration of the Eucharist. The instructions on preaching appeared in the original Latin text; those on confession and communion offered a Latin translation of the vernacular instructions published earlier for use in the Milanese diocese.

The man responsible for the Antwerp publication was a close associate of Borromeo’s, Giovanni Francesco Bonomi.⁴⁴ Bonomi had been Borromeo’s fellow-student in Pavia and had frequently assisted the latter when he was cardinal-nephew and archbishop. Twice Bonomi had accompanied the Milanese archbishop in difficult visitations of Swiss

⁴¹ Twain, *Innocents Abroad*, p. 140.

⁴² See *Confessional Sanctity (c. 1500–c. 1800)*, ed. Jürgen Beyer et al. (Mainz, 2003). An explicit re-proposition of Borromeo as ideal bishop is in Louis Abelly, *Episcopalis sollicitudinis enchiridion ex plurimorum ecclesiae catholicae antistitum sanctitate ac pastoralis vigilantia insignium et praesertim D. Caroli Borromaei*... (Paris, 1668); on the context, see section II.3 below. It is worth noting that other Tridentine bishops developed similar projects, including the uses of confession to pursue orthodoxy and social discipline, and at times had a broad resonance similar to Borromeo’s. Such is the case of Bartolomeu dos Mártires, archbishop of Braga, on whom see Giuseppe Marcocci, “Il governo dell’arcidiocesi di Braga al tempo di Bartolomeu dos Mártires (1559–1582). Riflessioni e documenti sull’episcopato portoghese nell’età del Concilio di Trento,” *Archivio italiano per la storia della pietà* 15 (2003), 81–150, esp. 115–25; and Bernard Montagnes, “Le rayonnement de Barthélemy des Martyrs dans la France Tridentine,” in *IV Centenario da morte de D. Frei Bartolomeu dos Mártires. Congresso internacional: Actas* (Fátima, 1994), pp. 571–621 (I thank Giuseppe Marcocci for these references). On the case of Pedro Guerrero of Granada, see n. 23 above.

⁴³ *Pastorum instructiones, ad concionandum, confessionisque et eucharistiae sacramenta ministrandum utilissimae ab illustrissimo et reverendissimo domino sanctae memoriae d. Carolo Borromaeo... iam pridem ad suae dioecesis, et provinciae usum editae*... (Antwerp, 1586).

⁴⁴ G. Rill, “Bonomi, Giovanni Francesco,” in *Dizionario biografico degli Italiani* 12 (Rome, 1970), 309–14; John M. Headley, “Borromean Reform in the Empire? *La Strada Rigorosa* of Giovanni Francesco Bonomi,” in *San Carlo Borromeo: Catholic Reform and Ecclesiastical Politics in the Second Half of the Sixteenth Century* (Washington, D.C., 1988), pp. 228–49.

regions subject to Milan. Elected (upon Borromeo's prompting) to the Lombard bishopric of Vercelli in 1572, he continued to be involved in the politics of Italy's religious frontier. Following visitations of Vercelli and Como, he was (again with Borromeo's backing) appointed papal nuncio to Switzerland in 1579, where he was to conduct visitations and implement the Tridentine decrees. In 1581 his mandate was enlarged to the Holy Roman Empire. He set out to Vienna for a cordial reception by Emperor Rudolph II, and there he made plain his intransigence toward all heretics. With a bull of 19 January 1585, Pope Gregory XIII widened Bonomi's action radius further by appointing him to the Cologne nunciature. Charged, effectively, with defending the fragile northwestern frontier of the Roman Catholic Church, Bonomi thus ventured into the war-torn southern Netherlands in the summer of 1585, as the region was being recaptured by the Spanish troops of Philip II's regent of the Netherlands, Alessandro Farnese, prince of Parma. In June, Bonomi forged an alliance with Parma under the walls of a critical outpost, Antwerp, which the Spanish had held under siege for more than a year. When this strategic seaport finally fell to the Catholic forces in the summer, he reappeared there in November to help consolidate the victory in religious terms. Catholic clergy were summoned back to the city, while its numerous Protestant inhabitants saw themselves faced with the choice of conversion or departure. In the next few years, a vast portion of the population emigrated to the Dutch Republic as the city was being turned into a bastion of Flemish Catholicism.⁴⁵

Bonomi helped jump-start this process, along with a newly appointed diocesan curia headed by Vicar Sylvester Pardo.⁴⁶ In November, the nuncio arrived in Antwerp carrying (as Pardo reported later) a copy of Borromeo's massive *Acta Ecclesiae Mediolanensis*, first published three years earlier, and introduced this comprehensive record of the Milanese

⁴⁵ Jonathan I. Israel, *The Dutch Republic: Its Rise, Greatness and Fall 1477–1806* (Oxford, 1995), pp. 414–17; more extensively, Alfons K. L. Thijs, *Van geuzenstad tot katholiek bolwerk. Maatschappelijke betekenis van de Kerk in contrareformatisch Antwerpen* (Turnhout, 1990), esp. pp. 33–40.

⁴⁶ Marie Juliette Marinus, *Laevinus Torrentius als tweede bisschop van Antwerpen (1587–1595)* (Brussels, 1989), p. 71. Bonomi's negotiations with Farnese also led to Spanish acceptance of Bonomi's candidate for the episcopal see, Laevinus Torrentius, who had spearheaded unsuccessful attempts at introducing the Tridentine decrees in the Netherlands and who, as a young man, had been part of Borromeo's circle in Rome. Torrentius became Antwerp's bishop in 1587 (Marinus, *Laevinus Torrentius*, pp. 20, 35–36, 44–45 and *passim*).

church reforms to local religious officials. The latter, or perhaps simply Pardo himself, agreed that it should serve as a model for the spiritual re-conquest of Antwerp. After consultation with Bonomi, however, it was decided that instead of the entire *Acta*—including its core of councils and synods—Borromeo's instructions on preaching, confession, and communion had priority for immediate publication. As Pardo himself declared in the volume's introduction, they were like the "claws" from which one could "recognize the lion." Or, put more concretely, these instructions were most fit "both to lift the spirits of the clergy and to save the Christian people of these regions, where so many different heresies rage, for the old religion."⁴⁷

By emphasizing preaching and sacramental practice, Borromeo's instructions offered the key weapons necessary to confront the confessional enemy; and they gave Antwerp's curia control over the recently returned clergy charged with implementing it—particularly the regulars who (in Antwerp as elsewhere) were as indispensable as they were prone to waywardness.⁴⁸ The Antwerp authorities commissioned Christopher Plantin—an old-time printer for Philip II who was now eager to re-establish his Catholic credentials—to publish the *Pastorum instructiones*; the book came out in 1586.⁴⁹ At Bonomi's initiative, the work was also issued in Cologne the next year. After this, a steady stream of new editions was to keep it alive well into the 19th century.⁵⁰

3. In 1648 the *Avvertenze*, along with the penitential canons, appeared for the first time in a French translation. It was Charles de Montchal, archbishop of Toulouse, who ordered its publication for use in his diocese.⁵¹ At first sight, the initiative seems to be straightforward, in line with the favourable reception Borromeo had received in France, especially in the South, from the late 16th century. Yet in the 1640s,

⁴⁷ Sylvester Pardo, in his letter of introduction, dated 27 November 1585, to Borromeo's *Pastorum Instructiones*, pp. 5–9; see also Headley, "Borromean Reform," p. 242.

⁴⁸ Thijs, *Van geuzenstad tot katholiek bolwerk*, pp. 73–77.

⁴⁹ On Plantin, see Léon Voet, *The Golden Compasses. A History and Evaluation of the Printing and Publishing Activities of the Officina Plantiniana at Antwerp* (Amsterdam and New York, 1969).

⁵⁰ Editions include: Douai, 1616 and 1624; Ghent, 1672 and 1828; Leuven, 1664 and 1701; and Rouen, 1707. For German and Austrian editions, see notes 102–03 below.

⁵¹ *Instructions de S. Charles Borromée... aux confesseurs de sa ville et de son diocèse... ensemble la manière d'administrer le sacrement de Pénitence, avec les canons pénitentiels... imprimé par l'ordre de... Charles de Montchal, archevesque de Tolose, pour l'usage des confesseurs de son diocèse* (Toulouse, 1648). On Montchal, see J. Carreyre, "Montchal, Charles de," *Dictionnaire de Théologie Catholique* 10 (1928), 2373.

Borromeo's rules for confessors had become entangled in utterly complex confessional politics. As a (by no means obvious) result, the Gallican church leadership required in 1657 that Borromeo's booklet be promoted as an official guide for confession in all French dioceses. This publication became the cornerstone of Borromeo's seminal role in early modern French Catholicism.

To be sure, the influence of the Milanese archbishop went back to his own lifetime. During the 1580s, as many as three of Borromeo's associates had made their way to France as papal nuncios, and the network of Borromean followers they were part of included such prelates as the Florentine Alessandro Canigiani, archbishop of Aix; Cardinal François de Joyeuse, archbishop of Toulouse; and François de la Rochefoucauld, bishop of Clermont, later of Senlis.⁵² Early in the 17th century, Borromeo's printed legislation indirectly trickled into France as well. A pastoral manual of clear Borromean imprint appeared in French translation in 1613 and was reissued repeatedly.⁵³ But it was not until 1643 that Borromeo's *Acta* were published in France, under the orthodox auspices of Jean-Jacques Olier, prêtre of Saint-Sulpice.⁵⁴

The same year, however, St Charles became a pawn in a virulent religious dispute, as the Jansenist Antoine Arnauld, in his tract *De la fréquente communion*, appealed to Borromeo's *Avvertenze* to support his own views on confession and communion. He thus intervened in, and inflamed, a nationwide controversy over penance that pitted Jansenists against Jesuits. In it, the former argued for rigorous standards of penance, while the latter tended to advocate the more flexible norms of probabilist casuistry.⁵⁵ Arnauld specifically cited Borromeo's re-introduction of the penitential canons, public penance, and the delay of absolution

⁵² Antoine Dégert, "Saint Charles Borromée et le clergé français," *Bulletin de littérature ecclésiastique*, IV^e série, 4 (1912), 145–59 and 193–213 (at 145–59); and Marc Venard, "Influence of Carlo Borromeo on the Church of France," in *San Carlo Borromeo*, pp. 208–27, at 209–10.

⁵³ J.-B. de Constance [Giovanni Battista Costanzo], *Avvertissements aux recteurs, curés, prêtres et vicaires...* (1613; later editions: Lyon, 1620 and 1654); in 1697 the book was republished under the title *Le pastoral de Saint Charles Borromée* (Lyon, 1697). Costanzo, archbishop of Cosenza, republished the Italian edition, entitled *Avvertimenti per l'ufficio del rettore curato*, in 1606. On this text, see Paul Broutin, *La réforme pastorale en France au XVII^e siècle*, 2 vols. (Tournai, 1956), 2:348–60.

⁵⁴ *Acta Ecclesiae Mediolanensis, sive sancti Caroli Borromaei instructiones et decreta...* (Paris, 1643); see also Dégert, "Saint Charles Borromée," pp. 193ff.

⁵⁵ Jean Delumeau, *L'aveu et le pardon. Les difficultés de la confession: XIII^e–XVIII^e siècle* (Paris, 1990), pp. 113–21, 133–49. For studies on Borromeo's reception in France, see notes 52 and 59.

to shore up his argument for higher standards of contrition and penance.⁵⁶ The book caused an uproar in Jesuit circles, but found critical support in high places: 16 bishops, including Archbishop Montchal of Toulouse, openly endorsed *De la fréquente communion*.⁵⁷

It took a full decade of polemics after this until the Jansenist cause seemed finally headed for defeat. Pope Innocent X, in his bull *Cum occasione* (23 May 1653), declared four out of five propositions attributed to Jansenius heretical, and the fifth one false; the bull was further clarified in a constitution of 4 September 1656. In 1655, moreover, Arnauld's opinions came under review by the Sorbonne, from which he was expelled the next year. That year, too, the *Assemblée générale du clergé* adopted a *Formulaire* rejecting Jansenius's main work, *Augustinus*, and required all French clergy to sign it. Yet the Jansenist position did not die an easy death. Even as Arnauld was losing the theological debate, Blaise Pascal rekindled the controversy by taking it public in his famous anti-Jesuit *Lettres provinciales* (1656–1657). Under these circumstances, the *Assemblée du clergé* of 1657 decided to have a French translation of Borromeo's *Instructions* printed and distributed for use of the entire French clergy.⁵⁸

For good reason, historians have explained this decision as the outcome of an intense power struggle within the Gallican church. The motivations, however, are less clear. The publication of Borromeo's *Instructions* has been described not only as an anti-Jesuit move—which it certainly was—but also as an attempt to save the book from Jansenist misappropriation. In fact, throughout the last century, French scholars have charged that Arnauld attempted to “confiscate St Charles Borromeo” (Dégert), distorted his texts on penance, or even committed “un véritable abus d'interprétation” (Bernos), in his effort to enlist the

⁵⁶ Antoine Arnauld, *De la fréquente communion où les sentimens des Pères, des Papes et des Conciles, touchant l'usage des sacemens de pénitence et d'eucharistie, sont fidèlement exposez...* (Paris, 1643). In the following I will refer to the 7th ed. (Paris, 1683), where Borromeo's instructions on penance are discussed in chs 33–44 of Part II (pp. 473–533), but I have double-checked my observations based on the 2nd ed. (Paris, 1643).

⁵⁷ The bishops' individual endorsements, along with collective letters to Popes Urban VIII and Innocent X, can be found in Arnauld, *De la fréquente communion*, pp. 81–114 and 675–97.

⁵⁸ Carlo Borromeo, *Instructions... aux confesseurs de sa ville et de son diocèse* (Paris, 1657). A copy of this rare first edition is owned by the Bibliothèque municipale Jullien de Laillier, Valognes (Manche); numerous reprints and re-editions were to follow (see note 79 below).

Milanese saint in his rigourist cause.⁵⁹ Our analysis of Borromeo's program of confession makes it necessary to reconsider this view. On the whole, Arnauld captured the Borromean spirit very well, and the specifics he cited were based on an accurate reading (and extensive quotation) of the published sources. The penitential canons, public penance and the delay of absolution were indeed, as Arnauld asserted, central to Borromeo's project and had contributed to his reputation as a radical in his own day. Nor do arguments for Borromeo's "nuanced" approach in these matters (Bernos), or even his "extreme moderation" (Guerber), really convince: the Milanese archbishop was fully in earnest when imposing public penance and withholding absolution, as is testified by the very opposition these measures provoked.⁶⁰ As for the penitential canons, it is true that Borromeo never intended these to be applied literally or mechanically, but neither did Arnauld, who cited Borromeo literally on this point.⁶¹

Nevertheless, there are clear differences of detail, emphasis, and above all, context. Thus frequent confession, advocated in the *Avvertenze* and elsewhere, was conspicuously absent from Arnauld's interpretation: his book, in fact, could be read as an attack against its current practice.⁶² Yet some historical perspective on the issue may be helpful. When Borromeo integrated the canonical practice of Easter confession, the basis of his system of discipline, with still-new Jesuit programs of frequent confession and spiritual direction, he clearly intended the latter as an extension, not an alternative or moderation, of the former. Borromeo would certainly not have supported frequent confession (and communion)

⁵⁹ Dégert, "Saint Charles Borromée," pp. 200–13; Broutin, *La réforme pastorale*, 2:379–398; Jean Guerber, *Le Ralliement du clergé français à la morale liguorienne: l'abbé Gousset et ses précurseurs (1785–1832)* (Rome, 1973), pp. 309–27; Bernos, "Saint Charles Borromée," pp. 193, 196–97; Bernard Plongeron, "Charles Borromée, exemple et modèle: son influence en France (XVI^e–XIX^e siècles)," in *San Carlo e il suo tempo. Atti del Convegno Internazionale nel IV centenario della morte*, 2 vols. (Rome, 1986), 1:493–525 (at 515–21); and, with a different twist, idem, "Unità tridentina e diversità francese," pp. 151–52. Closer to my interpretation is Robin Briggs, *Communities of Belief. Cultural and Social Tensions in Early Modern France* (Oxford, 1989), pp. 304–06.

⁶⁰ Compare Bernos, "Saint Charles Borromée," pp. 193–195, with de Boer, *The Conquest of the Soul*, especially chs 2 and 6. In criticizing Arnauld's interpretation on this point, Broutin incorrectly assumed that Borromeo proposed public penance merely as "an example of past legislation, not an ideal to which one should return" (Broutin, *La réforme pastorale*, 2:391).

⁶¹ See Arnauld, *De la fréquente communion*, pp. 477–78 and 480.

⁶² Thus also Broutin, *La réforme pastorale*, 2:391–93; and Briggs, *Communities of Belief*, p. 306. But note Arnauld's denial that he opposed frequent communion (*De la fréquente communion*, 2nd ed., p. 22).

if it led to laxism, the prime target of his penitential campaign. The potential for conflict became manifest in his subsequent disputes with the Jesuits. By the 17th century, in France, that conflict became macroscopic as the two approaches were separated out and identified with Jesuit probabilism (or laxism) and Jansenist rigorism.

It is worth noting that the modern historical view of Arnauld as one who radicalized a more moderate Catholic saint for his own purposes traces its origins to the 17th century. For example, students of the affair have repeatedly invoked the opinion of St Vincent de Paul ("the most balanced judgment," according to Broutin) expressed in a letter of 1648. In it, de Paul acknowledged Borromeo's penitentialism and the fierce opposition it had caused in his own day, but this, he observed, "is quite different from what is being said, that he ordered public penance for secret sins and satisfaction before absolution, as the book [by Arnauld] aims to do."⁶³ This accusation (along with others cited later in the letter) is not borne out by a careful reading of *De la fréquente communion*. Arnauld emphatically required public penance for public, not private, sin; and in raising the requirements for absolution, he may have invited the suspicion of demanding penance before absolution, but he was faithful to the Borromean prescriptions. This baffling reading (which Dégert, Broutin, and other scholars failed to check for its accuracy) suggests that Vincent de Paul either misread Arnauld's work or echoed imprecise interpretations that had come to circulate. Arnauld himself (in the book's second edition) responded angrily to the "deceptions" [*impostures*] of a Parisian Jesuit, who had charged from the pulpit that "I wanted to reintroduce public penance today, as it was in the past, for all kinds of sin..." along with other accusations.⁶⁴ Whatever the source of de Paul's judgement, it testifies to the heated atmosphere surrounding the controversy, in which textual accuracy

⁶³ Saint Vincent de Paul, *Correspondance, entretiens, documents*, ed. Pierre Coste, 14 vols. (Paris, 1920–25), 3:363; quoted *in extenso* by Dégert, p. 202, and Broutin, pp. 397–98, and also cited in Dégert, "Saint Charles Borromée," pp. 202–03; Guerber, *Le ralliement*, p. 313; and Bernos, "Saint Charles Borromée," p. 195.

⁶⁴ Arnauld, *De la fréquente communion*, 2nd ed. (1643), p. 24. The charge recurs in Vincent de Paul's letter: "And never will one find that he [Borromeo] ordered public penance or the removal from communion for all kinds of mortal sins..." (*Correspondance*, 3:363). In 1644 the Jesuit Denis Petau attacked Arnauld's reading of Borromeo in his *De la pénitence publique et de la préparation à la communion* (Paris, 1644). This work, along with that of another Jesuit opponent, Nicolas Lombard (*Lettres d'Eusèbe à Polémarque sur le livre de M. Arnauld, de la Fréquente communion*... [Paris, 1644]), is cited by Dégert, "Saint Charles Borromée," pp. 201–02, as an effective rebuttal of Arnauld's claims.

may have fallen victim to the effort to reclaim Borromeo's work from the Jansenists. But the claim stuck: decades later, Pope Innocent XI still inveighed against those infected with Jansenism, "whether they refused to sign the *formulaire* or made an evil use of what St Charles Borromeo has said regarding confession."⁶⁵ The pope thus affirmed an interpretation that was to resurface, not without apologetic overtones, in modern historiography.⁶⁶

We can surmise, then, that it was Arnauld's Jansenism, rather than his reading of Borromeo, that provoked the strong reaction: Arnauld implicitly associated Borromean penitentialism with a radical Augustinian theology of grace and redemption, major tenets of which were condemned as heretical. In ordering the publication of Borromeo's *Instructions*, the *Assemblée du clergé* may well have wished to cancel this association. However, because of St Charles's undisputed sanctity, the text also allowed the hierarchy to adopt the Jansenist line on discipline and morality. In this sense, the decision was a signal victory for the party of Arnauld and Pascal.

The publication history of the *Instructions* confirms this interpretation. In 1655, when the *Assemblée du clergé* had first wished to review Borromeo's book, there was no copy in French available except for one specifically ordered from Toulouse by Gabriel Ciron (1620–75), canon of St.-Etienne of Toulouse and chancellor of the city's university. Ciron was, like his archbishop, a known Jansenist supporter who had nevertheless accepted the latest papal constitution against Jansenism as well as the *Formulaire*. To introduce the new edition for the French clergy was Antoine Godeau, bishop of Vence, another Jansenist sympathizer and personal friend of the Arnauld family; and not by chance, Godeau published a biography of Carlo Borromeo in the same fateful year,

⁶⁵ Innocent's statement (reported by the French ambassador in Rome to Louis XIV, 30 January 1680) is cited in Dégert, "Saint Charles Borromée," p. 212.

⁶⁶ The apologetic implications of this historiography are most evident in Guerber's assessment of Borromeo. In *Le Ralliement du clergé français*, the French Jesuit approvingly studied the anti-rigourist reaction evident in the scholarship of Thomas-Marie-Joseph Gousset (1792–1866), especially in the latter's *Justification de la théologie morale du B. Alphonse-Marie de Liguori* (Besançon, 1832). A moderate Borromeo, disassociated from French rigourism, is important in this attempt to place the "golden-mean" morality of Alfonso de' Liguori (1696–1787) within the Catholic mainstream: "the doctrine of a canonized theologian [St Charles]," with all its "guarantees of authority and orthodoxy," makes it possible to "show that the positions of de Liguori are those of the Church" (Guerber, *Le Ralliement*, p. 311).

1657.⁶⁷ Certainly Arnauld himself, looking back on the controversy in 1686, was to declare victory. By this time, he claimed, there was no one left, not even among the Jesuits, who dared speak out against the delay of absolution, the removal of occasions of sin, and other practices advocated in *De la fréquente communion*.⁶⁸

French Jansenism may have been doomed to a marginal status—despite its renewed influence in the 18th century—but the penitentialism that was at the core of its theology became institutionalized by the French hierarchy. Borromeo's text, originally drafted to achieve very similar objectives, was the perfect vehicle to do this. In asserting episcopal control over confession, especially against the regular orders, the *Instructions* powerfully backed up the main goal of the French episcopate—to rein in the “scandal” of Jesuit laxism. In France, Borromeo's text was published as the episcopal instructions they had always been, aimed (as the *Assemblée* of 1657 affirmed) “to pose a barrier against the course of the novel opinions that lead to the destruction of Christian morality.”⁶⁹

Borromeo's reception thus played a seminal role in the struggle over moral policy within the French Catholic church. Yet (and this is a point that has not received the attention it deserves) it was more than an internal affair. Looming against the background were the larger confessional issues of the day. From the outset, the Jansenists' claim on Borromeo had been dangerous because of allegations, correct or not, that they had ties to Protestantism. Vincent de Paul, in his letter of 1648, referred to Arnauld and his associates as “those new Reformers,” a charge also reported by Arnauld himself.⁷⁰ Pascal became the target of more precise accusations. The second of a series of *Réponses* to

⁶⁷ A. Chapeau, “Godeau (Antoine), évêque de Vence,” *Dictionnaire de biographie française* 16 (1982), 426–27; and Broutin, *La réforme pastorale*, 2:453–67. Longer studies include A. Cognet, *Antoine Godeau, évêque de Grasse et de Vence, un des premiers membres de l'Académie française (1605–1672)* (Paris, 1900); *Antoine Godeau, 1605–1672, de la galanterie à la sainteté. Actes des journées commémoratives*, Grasse, 21–24 avril 1972, ed. Yves Giraud (Paris, 1975). Godeau's biography of Borromeo: *La vie de S. Charles Borromée...* (Paris, 1657). See also his *Ordonnance de Monseigneur l'Evesque de Vence au prieurs, vicaires, cures et confesseurs de son diocèse, en publiant dans son synode de l'année 1659 les Instructions de saint Charles Borromée, cardinal et archevesque de Milan, laquelle ordonnance porte la censure d'un livre intitulé Apologie pour les Casuistes, etc., imprimé à Paris en 1657* (Paris, 1659).

⁶⁸ Letter of 1 January 1686, cited in Delumeau, *L'aveu et le pardon*, p. 144.

⁶⁹ Cited in Bernos, “Saint Charles Borromée,” p. 196.

⁷⁰ Vincent de Paul, *Correspondence*, 3:363; Arnauld, *De la fréquente communion*, 2nd ed., p. 9.

the *Lettres provinciales* compared Pascal's views systematically with those expounded by the Calvinist Pierre Du Moulin in his *Des traditions et de la perfection et suffisance de l'Écriture Sainte* (1631). That work was not only as anti-Jesuit as Arnauld and Pascal but also had particularly attacked laxity in moral and penitential matters.⁷¹ Pascal retorted indignantly that the Jesuits were guilty of fabricating rumours of a Jansenist-Calvinist conspiracy.⁷² The vehemence of this reaction revealed a sensitive spot: if it was true, as the prominent Jesuit François Annat claimed, that "[w]e find in almost all heretics an exaggerated rigorism (*des rigueurs affectés*) in morality and church discipline,"⁷³ the Jansenists risked finding themselves on the wrong side of more than one fence. This critique also rendered Arnauld's cooptation of Borromeo particularly dangerous: the suggestion of an affinity between Calvin and Borromeo raised taboos beyond contemplation in the confessional era.⁷⁴ It is no surprise that Arnauld himself, to deny any suspicious resemblances, should have turned later to harsh anti-Calvinist polemics, for instance in *Le renversement de la morale par les calvinistes* (1672) and *L'impiété de la morale des calvinistes* (1675).

In fact, such an anti-heretical reflex went back to the beginning of the affair. In 1643, Arnauld's high-ranking supporters (like Borromeo in the previous century) already pointed to the connection between moral order and heresy: according to these French bishops, Arnauld "defends the Catholic truth against the errors of Luther and Calvin as much as he defends Christian innocence and purity against vice and

⁷¹ Richard Parish, *Pascal's Lettres provinciales: A Study in Polemic* (Oxford, 1989), pp. 66–74. The same *Réponse* devoted a chapter to the "occasions de pécher" so central to Borromeo's reforms (see Parish, *Pascal's Lettres provinciales*, p. 193).

⁷² Thus the Jesuits, he charged, had insinuated "that [Arnauld's] book *De la fréquente communion*, approved by so many doctors and bishops, but which is in truth slightly opposed to you, was produced in secret communication with the ministers of Charenton [the town near Paris where Protestant worship was allowed]" (Blaise Pascal, *Oeuvres complètes*, ed. Michel Le Guern, 2 vols. [Paris, 1998], 2:757).

⁷³ François Annat, *La Bonne Foi des Jansénistes* (1657), quoted in Parish, *Pascal's Lettres provinciales*, p. 63.

⁷⁴ Such parallels are, of course, all the more interesting for historians. I have attempted a comparison between Borromean penance and Calvinist discipline in "Calvin and Borromeo: A Comparative Approach to Social Discipline," in *Early Modern Catholicism: Essays Presented to John W. O'Malley, S.J.*, ed. Hilmar M. Pabel and Kathleen M. Comerford (Toronto, 2001), pp. 84–96. Henry Phillips has conceptualized Jansenism and Protestantism as partly related "hostile spaces" within the French religious landscape; see his *Church and Culture in Seventeenth-century France* (Cambridge, 1997), pp. 189–225.

moral corruption.”⁷⁵ Moreover, they claimed, “the saintly doctrine of the great Cardinal Borromeo, reported very faithfully in [Arnauld’s] book,” had succeeded in winning back several heretics “both for the faith and for Catholic piety.”⁷⁶ This argument seems to have appealed to the French hierarchy ten years later, when its hardening line on discipline and penance coincided precisely with its mounting opposition against accommodations with the Huguenots made under the Edict of Nantes. The same *Assemblée du clergé* that in 1655 had first shown its interest in Borromeo’s *Instructions* also vowed to renew the fight against heresy and called upon the monarchy to review the Edict’s implementation. Louis XIV accepted the charge with a harsh anti-heresy declaration of 18 July 1656 and subsequent legislation of 1657. Thus began the incremental “smothering” of French Protestantism that was to lead to the revocation of Nantes in 1685.⁷⁷

French historians have long tended to reject or avoid the notion of confessionalization. For much of the “confessional” age (1560–1650), they have argued, the French state and Church did not share (as they did in many parts of Germany) a strong mutual interest in fostering religious-political unity. The French monarchy viewed it as more politically beneficial to accommodate religious differences. This critique remains valid and helpful, although recent scholars have suggested that confessionalism may yet prove its value in illuminating the socio-political developments of the entire 17th century.⁷⁸ In that history, 1657 is clearly a crucial year. For at that time a convergence of interests had emerged that led Church and state inexorably down the path of religious unification. It seems hardly coincidental that just then Borromeo’s *Instructions* were revived to serve as a compass. Innumerable reprints testify that the text retained this role until the 19th century, when French rigourism went into decline.⁷⁹

⁷⁵ Letter of the 16 bishops endorsing Arnauld’s work, to Pope Urban VIII (1643 or 1644), in Arnauld, *De la fréquente communion*, pp. 675–81, at 679.

⁷⁶ Letter of bishops (reduced to 13 due to death) endorsing Arnauld’s work, to Pope Innocent X (1644 or 1645), in Arnauld, *De la fréquente communion*, pp. 684–87, at 685.

⁷⁷ Janine Garrisson, *L’Edit de Nantes et sa révocation. Histoire d’une intolérance* (Paris, 1985), pp. 119–183. See also Elisabeth Labrousse, “Une foi, une loi, un roi?” *Essai sur la Révocation de l’Edit de Nantes* (Geneva and Paris, 1985).

⁷⁸ Philip Benedict, “Confessionalization in France? Critical Reflections and New Evidence,” in *Society and Culture in the Huguenot World 1559–1685*, ed. Raymond A. Mentzer and Andrew Spicer (Cambridge, 2002), pp. 44–61; James R. Farr, “Confessionalization and Social Discipline in France, 1530–1685,” *Archiv für Reformationsgeschichte/Archive for Reformation History* 94 (2003), 276–93.

⁷⁹ Reprints include: Paris 1658, 1659, 1665, 1672, 1695, 1700, 1702, 1736, 1756 and 1847; Aix, 1672; Angers, 1683; Lyon, 1686 and 1707; Rouen, undated but 1600s; and

4. A third rediscovery of the Borromean instructions for confessors took place in Rome. In 1700, Pope Innocent XII had his vicar, Cardinal Gaspare Carpegna, republish the text for use in the Roman diocese.⁸⁰ Carpegna presented the *Avvertimenti* (as they were called here) as a “golden rule” for all confessors. In his preface he dwelled at length on the need to restore discipline among a clergy plagued by immorality, deficient knowledge, excessive zeal, or “detestable conniving with the human interests of power, nobility and utility.”⁸¹ To revive their sense of duty and hone their skills, the cardinal required that all diocesan confessors participate in a yearly retreat focused on the study of Borromeo’s instructions. Appended to the text was a set of guidelines for these retreats.

Carpegna’s initiative was no doubt part of Innocent XII’s campaign for clerical reform, whose prehistory went back to the 1670s. At that time, the Sieneese Oratorian Mariano Sozzini had submitted an alarming report on the state of the Italian Church. Disregard of the decrees of Trent was evident in rampant abuses in episcopal government, failing control over the clergy, and disreputable lifestyles among priests. To this Sozzini contrasted the example of German Catholicism, recommended to him by Pope Alexander VII upon his return from a trip to Germany:

across the mountains, he told me, Catholics held the house of God in great veneration: if by chance someone was seen chatting in church or kneeling down on one knee only, bystanders would not hesitate to say: “he must be a heretic or an Italian.”

Sozzini’s conclusions soon played a major role in the conclave following the death of Clement X: a prominent faction, including the soon to be elected Innocent XI, subscribed to the need for a complete moral and disciplinary reform of the Church. On this the new pope based

Autun, 1705. In the 18th century, Borromeo’s influence was also revived by numerous editions of Roger Daon, *Conduite des confesseurs dans le tribunal de la pénitence, selon les instructions de S. Charles Borromée*... (1st ed., Paris, 1738) and numerous theological endorsements (on which see Dégert, “Saint Charles Borromée,” p. 209). It is not surprising that the 19th-century decline of rigourism should have inspired a reinterpretation of Borromeo: an example is Gousset’s *Justification* of 1832 (see note 66).

⁸⁰ *Avvertimenti di San Carlo per li confessori, stampati d’ordine di N. Sign. Papa Innocenzo XII, e publicati dall’Eminentiss. E Reverendiss. Sign. Cardin. Carpegna suo vicario per uso de in confessori di Roma e suo distretto, con le propositioni dannate, bolle, et altri decreti all medemi necessari, et utili* (Rome, 1700). I consulted the 2nd edition (“accreciuta d’alcune bolle e d’una breve notizia delle censure, e casi riservati in jure”), Rome, 1700.

⁸¹ See Carpegna’s preface, “Alli RR Confessori...,” *Avvertimenti*, pp. 3–12.

an extensive program to overhaul the administrative and financial underpinnings of the clerical estate.⁸²

Innocent XII followed in his namesake's footsteps: at the higher levels of the Church hierarchy he prohibited nepotism and restricted the sale of ecclesiastical offices, and further down he renewed efforts to strengthen diocesan controls over the lower clergy. In 1696 a new Congregation for Ecclesiastical Discipline was given the task of enforcing celibacy, clerical residence, the priestly dress code, educational standards, and the rules of ordination.⁸³ No doubt, Cardinal Carpegna was directly involved. A consummate Vatican insider, who had filled important positions throughout the papal bureaucracy since the time of Innocent X, he had been the cardinal-vicar of Rome from 1671; in that capacity he had been responsible for Church discipline in the Roman diocese. Known for his severity, and unpopular with the Roman laity, he was also behind harsh efforts to repress the theatre (1697), enforce the observation of feast days (1703), and revise the rules for the *Quarantore* (1705).⁸⁴ Clerical reform and control of public order went hand in hand.

Yet in 1700, facing the pressures and international attention that accompanied a Roman Jubilee, Carpegna had additional reasons to tighten his grip on the diocesan practice of confession. In his preface to the *Avvertimenti*, he defended Borromeo's judicial model of penance with a historical claim. "While these laws may be called new," he said, "that sainted prelate retrieved them from the bowels of the most ancient church discipline, from the arcane depths of sound doctrine, even from the very nature of the sacrament of penance, which was instituted as a form of corrective judgment (*giudicio emendativo*)."⁸⁵ The Christian people were to be ruled, he concluded pointedly, with the wisdom of the fathers, "not with new and ill-founded opinions."⁸⁵

⁸² Claudio Donati, "La Chiesa di Roma tra antico regime e riforme settecentesche (1675–1760)," in *Storia d'Italia. Annali 9: La Chiesa e il potere politico dal Medioevo all'età contemporanea*, ed. Giorgio Chittolini and Giovanni Miccoli (Turin, 1986), pp. 721–30 (quote at 724). For the city of Rome, see Massimo Petrocchi, *Roma nel Seicento* (Bologna, 1970), pp. 97–105.

⁸³ Ludwig von Pastor, *Geschichte der Päpste seit dem Ausgang des Mittelalters*, 14:2 (Freiburg im Breisgau, 1930), pp. 1128–31; Miriam Turrini, "La riforma del clero secolare durante il pontificato di Innocenzo XII," *Cristianesimo nella storia* 13 (1992), 329–61.

⁸⁴ G. Romeo, "Carpegna, Gaspare," in *Dizionario biografico degli Italiani* 20 (Rome, 1977), 589–91.

⁸⁵ Carpegna, "Alli RR Confessori...", in *Avvertimenti*, pp. 6, 11, 12.

What were those “new and ill-founded opinions”? The answer is contained in a dense set of inquisitorial decrees and papal constitutions appended to the volume and recommended as “necessary and useful to confessors.”⁸⁶ These included inquisitorial decrees of 1665, 1666, and 1679 in which Alexander VII and Innocent XI had condemned three long lists of laxist propositions—decrees of which the Jesuits, while not mentioned explicitly, were the obvious targets. The *Avvertimenti* further contained papal condemnations of the Quietist teachings of Miguel de Molinos (1687) and, very recently, those of François de Fénelon (1699); and, finally, Alexander VIII’s condemnation of Jansenist heresies (1690).⁸⁷

Carpegna’s veiled warnings in his preface—against laxism, against excessive zeal, against disobedience of Church authority—thus responded to the theological disputes that continued to rage at the turn of the 17th century. Of these, the Jansenist issue appears to have been the least pressing, as Rome experienced its own philo-Jansenist season.⁸⁸ Alexander VIII’s decree in question resulted from a denunciation brought to Rome via the Spanish crown. Clearly it did not receive priority treatment. In 1682 the Holy Office started reviewing more than two hundred propositions culled from the work of mostly Netherlandish theologians; and it took until 1690 to officially condemn 31 of these. Relatively few of the latter had direct relevance for confessional practice. Those that did seemed obvious targets for rejection, because they raised the bar of moral expectations to extreme levels; for example, “It is not allowed not follow a probable, or the most probable, opinion”; “Attrition, which arises out of the fear of Hell and punishment, without the love of God’s benevolence for its own sake, is not a good and supernatural motive”; and “Many confessions made before regulars are either sacrilegious or invalid.”⁸⁹

⁸⁶ *Avvertimenti*, p. 65; the appendices follow on pp. 66–314.

⁸⁷ All decrees are excerpted in H. Denzinger and A. Schönmetzer, *Enchiridion symbolorum definitionum et declarationum de rebus fidei et morum*, 36th ed. (Barcelona, Freiburg, and Rome, 1976), nos. 2021–65 (pp. 449–55), 2101–67 (pp. 457–66), 2201–69 (pp. 470–77), 2351–74 (pp. 484–88), and 2301–32 (pp. 480–84), respectively. Not to leave any uncertainties, the *Avvertimenti* also contained the constitution *Superna magni patris* (1670), which limited regulars’ rights to preach and confess, the most recent bull “In Coena Domini” listing papal excommunications, the Tridentine decrees on confession, and the section on penance from the Roman Ritual.

⁸⁸ Hanns Gross, *Rome in the Age of Enlightenment: The Post-Tridentine Syndrome and the Ancien Régime* (Cambridge, 1990), pp. 270–86, esp. 276–77.

⁸⁹ Denzinger and Schönmetzer, *Enchiridion*, pp. 480, 482 (nos. 2303, 2315, 2320).

In contrast, the controversies over laxism, which went back at least half a century, still occupied centre stage in papal Rome. One reason was no doubt that the Jesuits of the Roman College played a seminal role in the training of the diocesan clergy.⁹⁰ Thus the rigourist Cardinal Giovanni Casimiro Denhoff singled out an influential professor of the Roman College, Baldassare Francolini, for harsh criticism in an instruction on penance of 1696.⁹¹ Discussions within the Society of Jesus reveal the tense climate in the closing years of the 17th century. The repeated papal condemnations (in 1665, 1666, and 1679) had pushed the Jesuit leadership on the defensive, moving it toward anti-laxist positions, but not always to the satisfaction of the order members. First General Tirso Gonzalez caused great controversy by writing a book against probabilism.⁹² Then, in 1696, the General Congregation compiled a list of doctrines whose teaching was to be forbidden in all schools of the order. The list met with the approval of Pope Innocent XII but created a fury of criticism among Jesuits that was to continue past the turn of the century.⁹³ It is striking that these forbidden doctrines touched not only on old issues surrounding probabilism but also on vital matters of church (and civil) authority. Thus, "Human laws, even ecclesiastical ones, do not have binding power under [penalty of] mortal sin" (no. 9); "A subject is not held to obey the order of a superior if it is probably illicit" (no. 47); "The divine precept of penance, whether interior or sacramental, is not binding *per se*, except in *articulo mortis*" (no. 64); "The reservation of a sin does not apply to one who is unaware of it" (no. 80); "The parish priest can assign confessions to a priest who is not approved by the bishop" (no. 84); and so on.⁹⁴ To opinions as subversive as these (or subtler variations on similar themes) Borromeo's *Avvertimenti* were an obvious antidote.

⁹⁰ Fiorani, "Identità e crisi," pp. 143–50, 186 and passim; yet Fiorani curiously overlooks the anti-Jesuit reaction within the Roman Church leadership, while stressing the Quietist and Jansenist threats (e.g., *ibid.*, p. 151).

⁹¹ Pietro Stella, "Tra antilassismo e tensioni sociali: l'istruzione del card. Denhoff sulla penitenza (1696)," in *L'uomo e la storia. Studi storici in onore di Massimo Petrocchi*, ed. Rita Chiacchella and Giorgio F. Rossi, 2 vols. (Rome, 1983), 2:89–131. Francolini published his anti-rigourist views on penance in *Clericus romanus contra nimium rigorem munitus duplici libro, quorum uno veteris ecclesiae severitatem, altero praesentis ecclesiae benignitatem a rigidiorum quorundam scriptorum calumniis vindicat* (Rome, 1705).

⁹² Pastor, *Geschichte der Päpste*, 14:2, pp. 1116–25.

⁹³ Massimo Petrocchi, *Il problema del lassismo nel secolo XVII* (Rome, 1953), p. 55 and appendices 7 and 11. A fuller documentation can be found in *Institutum Societatis Jesu*, 3 vols. (Florence, 1892–93).

⁹⁴ Petrocchi, *Il problema del lassismo*, appendix 11, pp. 96, 99, 100, 101.

If the anti-Jesuit decrees thus suggest a resurgence of the disciplinary impulses within the Roman hierarchy, the third set of decrees—those on Quietism—help us better to understand the background. In his well-known *Scrittura* (1682), the old-time inquisitor Cardinal Francesco Albizzi had warned that “a new form of mental prayer called ‘prayer of quiet’ has divided the city into two factions” and found favourable reception among “many persons of great authority.”⁹⁵ For adversaries, the mysticism based on this meditation technique tended to jeopardize sacramental practice, dismiss the active penitential process required by confession, diminish conventional piety, and slacken obedience to the Church. Albizzi’s warnings paved the way for hard-line cardinals like the Roman vicar (and inquisitor) Gasparo Carpegna and the secretary of the Holy Office, Pietro Ottoboni. Despite the apparent resistance of Innocent XI, the Holy Office set to work on new instructions for confessors aimed at suppressing deviant forms of mysticism.⁹⁶

In the following years, as Adelisa Malena has shown, the famous trial against the Spaniard Miguel de Molinos, along with inquisitorial steps against his Vatican backer, Cardinal Pier Matteo Petrucci, became the occasion for turning a broad range of mystical phenomena into a well-delineated heresy—that of Quietism—and to embark on a “hunt for mystics” that consumed the remaining years of the century.⁹⁷ Molinos, who had formed a well-known conventicle in Rome, became the Quietist poster child when, on 3 September 1687, he was forced to abjure and was sentenced to life in prison. At that point, negative publicity had already gone further. According to some, the crowd had called for his life—*al fuoco!*—and a French observer noted that in Rome, Molinos “passes for a criminal, a depraved man, and a seducer.”⁹⁸ Later that year, Innocent XI was to condemn 68 propositions attributed

⁹⁵ Albizzi, “Oratione di quiete,” 12 April 1682, published in Massimo Petrocchi, *Il quietismo italiano del Seicento* (Rome, 1948), pp. 147–57, at 147. On Albizzi, see A. Monticone, “Albizzi, Francesco,” in *Dizionario biografico degli Italiani* 2 (Rome, 1960), 23–26.

⁹⁶ See the 1682 MS published in Paul Dudon, *Le Quietiste espagnol Michel Molinos (1628–1696)* (Paris, 1921), Appendix A, pp. 271–73. For these discussions and drafts see also Rome, Archivio della Congregazione per la Dottrina della Fede, *Inquisizione*, St.St. N3-a, particularly no. 57 (“Istruzione per i confessori...,” 1682) and no. 66 (circulary to bishops urging vigilance regarding confession); and MS Rome, Biblioteca Casanatense, Casanate 310, fols 475r and 549r. Many thanks to Adelisa Malena for these references.

⁹⁷ Adelisa Malena, *L’eresia dei perfetti. Inquisizione romana ed esperienze mistiche nel Seicento italiano* (Rome, 2003), pp. 5–6, 256–58, and passim.

⁹⁸ Donati, “La Chiesa di Roma,” pp. 730–31; Petrocchi, *Roma nel Seicento*, pp. 129–30.

to Molinos in his bull *Coelestis Pastor*. The pope also accepted the recantation forced upon the movement's highest supporter, his friend Cardinal Pier Matteo Petrucci, although he did so, to the "disgust" of the Holy Office, in private.⁹⁹ Regardless, these interventions were a victory for those voices within the Inquisition and the curia who stoked the anti-heretical fires; in 1690 their victory seemed to be complete with the election of Cardinal Ottoboni as the new pope, Alexander VIII (1689–91). They kept pursuing their cause, however, even at the highest levels of French society. When Archbishop François de Fénelon espoused, and publicly defended, the mysticism of Mme Guyon, a new papal condemnation was the result (1699).¹⁰⁰

Amidst these heated controversies, Cardinal Carpegna's publication of Borromeo's *Avvertimenti* in 1700 was a general call to order. It warned the Roman clergy not to transgress the limits of orthodoxy and to channel all devotions through a system of controls based on confession, and away from practices that might be constructed as alternatives to it. Above all, it reaffirmed episcopal and, especially, inquisitorial powers in the matter. This latest reincarnation of Borromean discipline of the soul thus reflected the victory of the advocates of centralization and judicial constraint in the late-17th-century papal court. It was less obviously a response to external threats posed by confessional enemies, as had been the case in Milan, in the southern Netherlands, and in France. But once more the link between heresy, confession, and the social order was manifest: here penitential discipline went hand in hand with the construction of enemies of the faith. In 1643, Antoine Arnauld had suggested that God himself "brings about heretical disputes and arguments" in an effort both "to clarify the truth of the faith" and "to establish discipline." From this perspective, the Roman crisis of the late 1600s showed God's hand at work through the Holy Office.

5. The Roman edition of the *Avvertimenti* was to have repeated reprints in 18th-century Italy—in Rome, Venice, Bologna, and elsewhere.¹⁰¹ Even more impressive is the proliferation of Borromeo's instructions in other parts of Europe: while the *Instructions* continued to be published in France, and the *Pastorum instructiones* in the now-Austrian Netherlands, the book was also (re)introduced in Spain and German-speaking

⁹⁹ Petrocchi, *Il quietismo*, pp. 66–67.

¹⁰⁰ Pastor, *Geschichte der Päpste*, 14:2, pp. 1106–15.

¹⁰¹ Rome, 1701, 1705, 1726, and 1771; Perugia, 1732; Venice, 1734, 1773, and 1802; Urbino, 1750; Bologna, 1754; and Parma, 1764.

lands. A Latin translation appeared in 1726 in Zug (Switzerland), and was reprinted in Vienna 11 years later, in Augsburg in 1758 and 1767, and in Eger (Hungary) in 1789.¹⁰² The *Pastorum instructiones*, too, appeared repeatedly in Germany and Austria.¹⁰³ In Spain the fortunes of Borromeo's work picked up in the later 18th century: it appeared in 1766 as *Instruccion...para los confesores y penitentes de todos estados*. A new translation was published in 1768 and reprinted several times, as far away as Guatemala.¹⁰⁴ Finally, a *Conducta de confesores*, based on the rules of Borromeo and François de Sales, had editions in 1792, 1796, and 1817.¹⁰⁵

Borromeo's disciplinary project thus came to function in the midst of Enlightenment culture; and it would be possible to relate this continued relevance to particular circumstances of the time. The cardinal introducing the Roman edition of 1771 pointed to its importance in fighting the permissiveness of probabilism—a new stab at the Jesuits that was obviously significant two years before the papal suppression of the Society of Jesus. We can also surmise that Borromeo's rediscovery was at times related, as had been the case in France, to the renewed fortunes of Jansenism. In Maria Theresa's Austria, for instance, philo-Jansenist bishops invoked Borromeo in reform programs arising out of their concerns about surviving pockets of Protestantism.¹⁰⁶ Spain, too, witnessed the emergence after 1750 of a generation of reform bishops, attacked by their opponents for harbouring Jansenist ideals. They favoured the expulsion of the Jesuits, advocated greater control over the other religious orders, and sought to counter ingrained habits of popular culture as well as, probably, Enlightenment anticlericalism.¹⁰⁷ In any case, Borromeo had become the acknowledged voice of authority,

¹⁰² *Instructiones Sancti Caroli Borromaei ad confessarios* (Tugii, 1726).

¹⁰³ Editions include: Augsburg, 1758 and 1762; Innsbruck, 1847; Vienna, 1760 (possibly a different format); and Münster, 1846 and 1860.

¹⁰⁴ *Instrucciones de S. Carlos Borromeo sobre la administracion del sacramento de la penitencia, con los canones penitenciales y pastoral del illmo. señor D. Antonio de Godeau, obispo de Vence...* (Madrid, 1768). Reprints appeared in Barcelona, 1770; Madrid, 1782 and 1798; and Guatemala, 1844.

¹⁰⁵ *Conducta de confesores en el tribunal de la penitencia segun las instrucciones de San Carlos Borromeo y la doctrina de San Francisco de Sales* (Madrid, 1792).

¹⁰⁶ Peter Hersche, *Der Spätjansenismus in Österreich* (Vienna, 1977), pp. 62–63.

¹⁰⁷ William J. Callahan, *Church, Politics, and Society in Spain, 1750–1874* (Cambridge, Mass., 1984), pp. 67–69. On anticlericalism focused on Inquisition and confession in Spain, see Edward Peters, *Inquisition* (Berkeley, 1988), pp. 155–188; and Stephen Haliczer, *Sexuality in the Confessional: A Sacrament Profaned* (New York, 1996), pp. 183–203.

and his program of penance and discipline had by now an extensive historical pedigree to support it. Thus Cardinal Stuart of York, in the 1771 edition of the *Avvertimenti*, could point to the work's earlier importance in France and during the Jubilee of 1700.¹⁰⁸ In turn, Cardinal Carpegna's introduction (in the Roman edition of 1700) reappeared in Belgian reprints of the *Pastorum instructiones*, and Spanish editions of the late 18th century recycled the preface that the philo-Jansenist bishop of Vence had written over a century earlier for the French translation. The *Avvertenze* had become Church tradition.

6. In 1963, Pope Paul VI presented a gift to the bishops just reconvened, after the hiatus of John XXIII's death and a papal election, at the Second Vatican Council. The new pope offered inspiration in the form of Carlo Borromeo's sermons held during his Provincial Councils and now published anew. Borromeo returned, once more, as a model for Church leaders. But the episode also shows how far the Milanese saint was now removed from the world he had helped shape.

Coming at a critical juncture in modern Catholicism, the sermon collection attested to the close connections among the Lombard cult of St Charles, a new scholarly interest in Borromeo's episcopal work, and the 20th-century papacy. The Milanese Achille Ratti, later Pope Pius XI (1922–39), had produced a new edition of the *Acta Ecclesiae Mediolanensis* (1890–96).¹⁰⁹ Angelo Roncalli of Bergamo, another Borromeo scholar, had published the massive apostolic visitation to Bergamo before being crowned Pope John XXIII on 4 November 1958, the feast day of St Charles.¹¹⁰ And Paul VI himself, born as Giovanni Battista Montini near Brescia, had occupied the episcopal see of Milan before his election as Pope.

Paul VI's intent in reviving the memory of St Charles is suggested, if only fleetingly, in the preface to the sermons. Those few introductory pages ended with a note about Borromeo's ardent love for his flock and his harsh asceticism, to conclude:

Although innovators (*novatores*) have publicly scorned and despised [St Charles's] pious vows, Catholic bishops have taken the royal road of the

¹⁰⁸ *Avvertimenti di S. Carlo Borromeo per li Confessori*. Nuovamente impressi per ordine di S.A.R. Ema. il Sig.Car. Duca D'York Vescovo di Frascati... (Rome, 1771), preface at pp. iii–xxv.

¹⁰⁹ *Acta Ecclesiae Mediolanensis*, ed. Achille Ratti, vols. 2–4 (Milan, 1890–96).

¹¹⁰ *Gli atti della visita apostolica di S. Carlo Borromeo a Bergamo, 1575*, ed. Angelo Roncalli, 2 vols. (Florence, 1936–57).

holy Cross to restore the mores of the clergy, to stimulate the people's piety, and to remove with the example of their lives the stains and wrinkles of the Church which Christ the Lord has acquired with his blood.¹¹¹

With an eye toward the hierarchical reform of the Church—the objective of Vatican II—Paul VI thus wished to invoke St Charles's zeal and austerity, and defend them against modern detractors. Borromean penitentialism resurfaced as a stern call to duty rather than a blueprint of Church reform, and even less as the program of social discipline we have studied in this chapter. This revival might hope to salvage traditional notions of piety and authority amidst “innovation,” but the echoes of Borromeo's reforms had all but died out. Why this should be so is not hard to fathom. The ancient link between required orthodoxy and social discipline appeared obsolete, for the time being, when a new general council—facing a world light-years removed from Trent—saw the need to discuss ecumenical rapprochement and the right to religious freedom.¹¹² What was left to the Church was to lead by persuasion and example. As for St Charles, the old ambivalence in his appeal seemed to be resolved at last in favour of his virtues. His acts of Church reform might continue to inspire conservative Catholics, but were otherwise, at least for now, left to scholars.¹¹³

¹¹¹ *Sancti Caroli Borromaei Orationes XII... Pauli VI Pont. Max. iussu denuo editae...* (Rome, 1963).

¹¹² *Conciliorum Oecumenicorum Decreta*, ed. Giuseppe Alberigo et al. (Bologna, 1991), pp. 908–920 (on ecumenism) and 1001–1011 (on religious freedom).

¹¹³ Still in 1988, when Pope John Paul II, no friend of modernity and rather a champion of central Church governance, addressed a group of Borromeo scholars, his discussion of the saint was framed in purely historical terms; see Johannes Paulus PP II, “L'opera di S. Carlo Borromeo è essenziale per comprendere chiaramente la Riforma cattolica,” in *Insegnamenti di Giovanni Paolo II: 1988 (Novembre–Dicembre)*, 11:4 (Rome, 1991), pp. 1569–71. In the same years, Cardinal Joseph Ratzinger, now Pope Benedict XVI, referred to Borromeo to illustrate the kind of “restoration” the post-Vatican II Church needed in his view: “It can certainly be said that Charles Borromeo rebuilt (‘restored’) the Catholic Church, which also in the area of Milan was at that time nearly destroyed for awhile, without making a return to the Middle Ages. On the contrary, he created a modern form of the Church.” The point was to suggest that “there is no return to the past,” which “is not only impossible but also not even desirable”; instead, Ratzinger meant restoration to be “a recovery of lost values, within a new totality” (letter cited in Joseph Cardinal Ratzinger with Vittorio Messori, *The Ratzinger Report: An Exclusive Interview on the State of the Church*, trans. Salvator Attanasio and Graham Harrison [San Francisco, 1985], pp. 38–39 n. 5).

EMBRACING THE 'TRUE RELIC' OF CHRIST: SUFFERING, PENANCE, AND PRIVATE CONFESSION IN THE THOUGHT OF MARTIN LUTHER

Ronald K. Rittgers

This essay examines the connection between Martin Luther's reformation of the late medieval penitential system and his effort to develop a new understanding of suffering in the life of the Christian. Though much has been written about these two topics individually, surprisingly little has appeared on the connection between suffering and penance in Luther's thought.¹ This oversight is unfortunate, because the link between the reformation of penance and the development of a new approach to suffering was very important to Luther himself. This link also had direct implications for Luther's efforts to reform popular piety. While the reformer rejected most traditional means of coping with suffering, because they were based on the notion of penance, Luther did provide his contemporaries with a select number of alternative rituals to assist them as they faced tribulation, most notably a reformed version of private confession that was unique to the Lutheran Reformation.

The place to begin our discussion of suffering and penance in Luther's thought is with a theological distinction that was absolutely essential for the late medieval Church's understanding of suffering: the guilt or debt of sin versus the penalty or punishment for sin.² The debt of

¹ I know of just one article that directly examines the connection between Luther's theology of suffering and his view of penance: E. Gordon Rupp, "Luther's Ninety-Five Theses and the Theology of the Cross," in Carl S. Meyer, ed., *Luther for an Ecumenical Age: Essays in Commemoration of the 450th Anniversary of the Reformation* (St. Louis, 1967), pp. 67–81. The standard treatments of Luther's theology of the cross do not explore the connection in any depth. I list them here: Paul Althaus, *The Theology of Martin Luther*, trans. Robert C. Schultz (Philadelphia, 1966), ch. 5, "The Theology of the Cross"; Walther von Loewenich, *Luthers Theologia Crucis* (Witten, 1967) [Walther von Loewenich, *Luther's Theology of the Cross*, trans. Herbert J. A. Bouman (Minneapolis, 1976)]; Bernhard Lohse, *Martin Luther's Theology: Its Historical and Systematic Development*, trans. Roy A. Harrisville (Minneapolis, 1999), Part 1, ch. 5; Alister E. McGrath, *Luther's Theology of the Cross: Martin Luther's Theological Breakthrough* (Oxford and New York, 1985).

² The following discussion draws on my book, *The Reformation of the Keys: Confession, Conscience, and Authority in Sixteenth-Century Germany* (Cambridge, Mass., 2004), ch. 2.

sin (*culpa*) referred to the burden of guilt human beings incurred initially as a result of the Fall (original guilt), and then subsequently as the result of each post-baptismal sin. The penalty for sin (*poena*) denoted divine punishment for both original sin—i.e., eternal damnation and the partial tainting of human nature—and for post-baptismal sin—i.e., suffering in both this life and the next.³ The majority view on the eve of the Reformation was that Christ's death had atoned for original guilt and eternal damnation, the benefits of which were communicated via baptism, but the tendency toward sinning (*fomes peccati*) remained for humanity to contend with. When late medieval Christians gave in to their dark side and sinned, they were instructed to turn to the sacrament of penance to relieve the new burden of debt and punishment they incurred. Not to seek divine grace for sin was to risk an eternity in hell, if the sin were mortal, or, more typically, to face an extended period of time in purgatory, suffering for venial sins. Only priestly absolution communicated through the sacrament of penance could forgive the debt of sin, but it was up to the penitent to deal with the penalty for sin, in cooperation with the Church's many forms of assistance. As the penitent sought to pay off his penalty for sin, suffering became very important.

By virtue of their possession of the keys, priests could transform the penalty one deserved to suffer in purgatory into a more bearable form of suffering one could endure in the here and now. Penance regularly included acts of suffering willingly embraced in order to pay off the penalty God had justly imposed for sin. Such penance was also intended to assist in the penitent's growth in Christian virtue. On the eve of the Reformation, penances assigned by confessors usually consisted of a few Our Fathers, Hail Marys, or giving of alms—i.e., on the whole, they were relatively light.⁴ The Church believed that it was better to assign a light penance that a layperson would likely perform than to demand a heavy one that might be ignored, to the penitent's eternal peril. But most late medieval Christians understood that additional penance was required if divine justice was to be satisfied—hence the popularity of

³ The distinction between the guilt of sin and the penalty for sin goes back at least as far as Anselm, who argued that humanity, owing to the gravity of its original sin, deserved not only to incur an infinite moral debt with God (original guilt) but also to receive a fitting penalty for having transgressed against its Maker in the first place. See Anselm of Canterbury, *Why God Became Man and The Virgin Conception and Original Sin*, trans. and intro. by Joseph M. Colleran (Albany, 1969), Book I:11 (pp. 84–85).

⁴ John Bossy, *Christianity in the West, 1400–1700* (Oxford and New York, 1985), p. 49.

pilgrimages, processions, fasting, and other forms of penitential piety. Self-imposed suffering could avert or reduce divinely imposed suffering, both in this life and the next.

The conviction that God demanded suffering for sin beyond what the Church required directly influenced one of the most controversial forms of late medieval piety, indulgences.⁵ Indulgences were based on the theory that the Church had access to a treasure of merit, a kind of spiritual bank account that contained all the meritorious deeds of Christ and the saints, especially their righteous suffering.⁶ The idea was that Christ's merit, along with that of the saints, exceeded the amount of good works God demanded for the salvation of humanity. That is, there was leftover merit, and the pope believed he had control over it, because he possessed the power of the keys. By obtaining some of this excess merit, one could reduce the amount of time one had to suffer in purgatory. Indulgences offered Christians a way of reducing the penalty for sin they owed God without actually having to suffer in body or soul themselves. (One typically had to confess one's sins to a priest before one could obtain an indulgence.)

But physical suffering was unavoidable in the later Middle Ages, and it too found its place in the late medieval penitential system. Penitents were regularly instructed to ask their confessors to apply to them not only the merit of Christ and their own good works, but also any sickness or adversity they had endured, along with the daily toil they experienced in providing for their basic needs. One popular late medieval handbook for confession instructed penitents to make the following request of their confessors:

I ask you lastly...that you would now place on me a small and brief sacramental penance which I can perform already in this hour or on this day. I also ask that you would apply to me, counting it as a penance, the merit of our Lord Jesus Christ's suffering...along with all my good works,

⁵ See Robert W. Shaffern, "The Medieval Theology of Indulgences," in *Promissory Notes on the Treasury of Merits: Indulgences in Late Medieval Europe*, ed. R. N. Swanson (Leiden and Boston, 2006), pp. 11–36.

⁶ One of the more influential confessional manuals of the later Middle Ages defines indulgences as follows: "Ablaz und antlaz ist ein vergeben vnd ein gelten der pu[o]zz vnd pein, die ein mensch schuldig ist fu[c]r sein su[c]nd, vnd wirt gegolten von dem schatz der heiligen kirchen"; see Georg Steer, Wolfgang Klimanek, Daniela Kuhlmann, Freimut Löser, and Karl-Heiner Südekum, eds., *Die "Rechtssumme" Bruder Bertholds: Eine deutsche abecedarische Bearbeitung der "Summa Confessorum" des Johannes von Freiburg. Synoptische Edition der Fassungen B, A und C*, 4 vols (Tübingen, 1987), 1:161, line 1 to p. 162, line 28.

or those which others have done for me (be they prayers, fasts, alms-giving, pilgrimages), plus all the grace and indulgence I have obtained, and also all the sickness and adversity I have suffered, and, finally, all of the concern and work...by which I meet my material needs. Apply to me all of these things as a satisfaction for my sin.⁷

Thus, according to late medieval penitential thought, bodily suffering, if humbly accepted and patiently endured, could be treated as a form of penance that would redound to one's eternal benefit—it, too, would reduce one's time in purgatory. In this system, suffering could actually be seen as an expression of divine grace, because it provided one with an opportunity to shorten one's stay in purgatory and also to be conformed more closely to the image of Christ and the saints.⁸ Suffering was redemptive, even salvific.

Because of the close connection between penance and suffering in late medieval theology, Luther could not avoid dealing with the latter as he sought to effect change in the former: the reformation of penance necessarily entailed a reformation of how the Church understood suffering. The Wittenberg reformer came to reject the penitential system and its view of suffering, but not all at once. As with the development of his evangelical soteriology,⁹ which motivated his re-evaluation of penance and tribulation, the process was a gradual one.¹⁰ He initially accepted the traditional distinction between *culpa* and *poena*, but early on introduced a distinction of his own that ultimately undermined the traditional division and its implications for suffering. Central to Luther's attempt to reform attitudes toward suffering was a radical redefinition of *poena*. This revision of *poena*, in turn, would directly influence the Wittenberger's effort to reform private confession.

⁷ *Peycht Spiegel der Sünder* (Nürnberg, 1510), fols L2r–L2v. See also *Die "Rechtssumme" Bruder Bertholds*, 3:1560, line 1 to p. 1562, line 24.

⁸ It should be noted that I have only dealt with one purpose for suffering in the late medieval tradition. For a discussion of how late medieval Christians embraced suffering to emulate ancient martyrs and follow in the footsteps of Christ, see Brad Gregory, *Salvation at Stake: Christian Martyrdom in Early Modern Europe* (Cambridge, Mass., 1999), pp. 50–62.

⁹ An enormous amount of scholarly ink has been spilled in an attempt to date and define Luther's so-called "Reformation Breakthrough." There is not space here to survey this important and complicated debate. Instead I will simply state that I favour a "late" date and argue for a series of breakthroughs or discoveries—of varying degrees of importance—that provided Luther with the essentials of his new evangelical soteriology by late 1518 or early 1519.

¹⁰ For a detailed discussion of Luther's rejection of late medieval penitential theology, see Rittgers, *Reformation of the Keys*, pp. 52–58.

In the *Ninety-Five Theses* (1517), Luther differentiated between divinely imposed punishment for sin and its human (i.e., papal or ecclesiastical) counterpart. He conceded that the pope had authority to remit penalties, but only those that the pope himself had imposed in the form of sacramental satisfactions.¹¹ The pope had no power to affect the divine penalty for sin, which remained until human beings entered heaven.¹² (Here Luther restricted the divine penalty for sin to contrition and mortification of the flesh, but elsewhere he made it clear that this punishment included *Anfechtungen*—i.e., temptations or trials—of any kind.)¹³ Neither could the pope affect the condition of souls in purgatory: his ability to bind and loose sins ended when a person died.¹⁴ Departed souls were in God's hands. This radical distinction between the penalties for sin imposed by God and those levied by human beings, coupled with Luther's restriction of clerical jurisdiction to the latter, posed a serious threat to the late medieval understanding of indulgences: they were simply a man-made form of release from man-made penalties, that in no way provided forgiveness for divinely imposed penalties or debt.

The problem with indulgences, Luther argued, was that they produced in those who obtained them false confidence and spiritual laxity.¹⁵ People trusted in indulgences rather than in divine grace and ignored Christ's call to true repentance, believing that possession of an indulgence relieved them of the need to take up the cross.¹⁶ But suffering

¹¹ Luther asserted in thesis 5, "The pope neither desires nor is able to remit any penalties except those imposed by his own authority and that of the canons"; see *Martin Luthers Werke, Kritische Gesamtausgabe*, 127 vols (Weimar, 1883–) [hereafter *WA*], 1:233, lines 18–19; and *Luther's Works*, American Edition, ed. J. Pelikan and H. T. Lehmann, 55 vols (Philadelphia and St Louis, 1955–) [hereafter *LW*], 31:26. [Here and throughout I follow the *LW* translation unless otherwise specified.]

¹² Cf. Theses 1–4. *WA* 1:233, lines 10–17; *LW* 31:25–26.

¹³ See McGrath, *Luther's Theology of the Cross*, pp. 169–75; and Martin Brecht, *Martin Luther: His Road to Reformation, 1483–1521*, trans. James L. Schaaf (Philadelphia, 1985), pp. 76–82.

¹⁴ Cf. Thesis 8. *WA* 1:233, lines 25–26; *LW* 31:26.

¹⁵ Luther had made this argument several times before it appeared in the *Ninety-Five Theses*. See Brecht, *Martin Luther*, pp. 186–88.

¹⁶ Luther asserted in his first thesis, "When our Lord and Master Jesus Christ said, 'Repent' [Matt 4:17], he willed the entire life of believers to be one of repentance"; *WA* 1:233, lines 10–11; *LW* 31:25. In thesis 40 he stated, "A Christian who is truly contrite seeks and loves to pay penalties for his sins; the bounty of indulgences, however, relaxes penalties and causes men to hate them—at least it furnishes occasion for hating them"; *WA* 1:235, lines 16–17; *LW* 31:29. For an illuminating discussion of the late medieval mystic Johannes Tauler's influence on Luther's understanding of contrition

under the cross was the Christian's lot and privilege. As Luther put it in his final two theses, "Christians should be exhorted to be diligent in following Christ, their head, through penalties, death, and hell; and thus be confident of entering heaven through many tribulations rather than through the false security of peace [Acts 14:22]."¹⁷ Indulgences encouraged Christians to flee suffering and self-deprivation, and therefore Luther thought them very dangerous. Divinely ordained suffering was to be embraced and patiently endured, not avoided or rejected in favour of clerically imposed penances or, worse yet, papally approved indulgences. There was no release from the divine penalty for sin in this life and, according to Luther, it was unchristian to seek one.

Luther repeated the distinction between man-made *poena* and divine punishment for sin in other treatises during the indulgence controversy,¹⁸ but he soon came to the conclusion that the Church had made far too much of remission of penalties and far too little of forgiveness of guilt.¹⁹ Because he had come to place so little stock in ecclesiastical punishments—indeed, in the notion that satisfactions for sin were even necessary—²⁰ and because he saw no way to escape divinely imposed penalties, Luther sought to focus his contemporaries' attention on the remission of guilt. But there remained an important connection for Luther between divinely imposed penalties and the forgiveness of guilt: the only way to endure God's "chastisements"²¹ was to have assurance of divine absolution. As he argued in *On Investigating the Truth and Consoling Fearful Consciences* (1518), "The remission of guilt calms the heart and

in the opening thesis of the *Ninety-Five Theses*, see Volker Leppin, "'Omnem vitam fidelium penitentiam esse voluit'—Zur Aufnahme mystischer Traditionen in Luthers erster Ablassthese," *Archiv für Reformationsgeschichte* 93 (2002), 7–25.

¹⁷ *WA* 1:238, lines 18–21; *LW* 31:33.

¹⁸ See, e.g., *Ein Sermon von Ablass und Gnade* (1517); *WA* 1:244, lines 11–14.

¹⁹ "Between those two ecclesiastical remissions of punishment and guilt, the remission of guilt surpasses by far [the remission of punishment]"; *Pro veritate inquirenda et timoratis conscientis consolandis hec sub R.P. Martino Luther Augustiniano disputabuntur per vices circulares pro nostro more* (1518); *WA* 1:630, lines 5–6, thesis 1. (My translation.)

²⁰ "I leave this matter to your opinion, but I say that one cannot prove from any text of Scripture that divine righteousness either desires or requires any punishment or satisfaction from the sinner, save his heartfelt and true repentance or conversion, along with the intention to bear the cross of Christ in the future and to practice the above-mentioned works [i.e., prayer, fasting, and the giving of alms], which are not imposed by any human being"; *Ein Sermon von Ablass und Gnade* (1517) *WA* 1:244, lines 15–20. (My translation.)

²¹ Luther frequently referred to suffering and misfortune as "divine chastisements"; see Theodore G. Tappert, *Luther: Letters of Spiritual Counsel*, Library of Christian Classics, 18 (Philadelphia, 1960; Vancouver, B.C., 2003), pp. 33 and 43.

takes away the greatest of all punishments, namely, the consciousness of sin."²² Later in the same treatise Luther asserted, "Where guilt and conscience have been forgiven there is no pain in punishment [*nulla pena est in pena*], but there is joy in tribulations."²³ Luther continued to believe—as he would throughout his life—that the most effective means of conveying remission of guilt to troubled consciences was through private absolution,²⁴ the place where the promise of forgiveness could be applied directly to individuals, who were then to receive it by faith. This conviction would have important implications for the role of confession in Luther's reformation of penance and suffering.

It was in the *Explanations of the Ninety-Five Theses* (1518) that Luther extended his critique of indulgences to include the whole of penitential piety; it was also here that Luther revealed how his thinking about penance and suffering had been influenced by his emerging theology of the cross, the real heart of his Reformation theology.²⁵ In the *Explanations* Luther accused his opponents of being theologians of glory who relied on reason and human moral effort to establish and achieve the good.²⁶ These *faux* theologians failed to understand how deeply flawed human intellectual and moral capacities had become after the Fall and how strongly inclined the human will was toward self-deification. They also failed to understand how since the Fall God had acted to humble human pride by choosing to reveal himself through the folly of the cross. Theologians of the cross, in contrast, understood the need for God to reveal himself "under the contrary" (*sub contrario*) and for human beings to be humbled, even annihilated, if they were to become, as Luther

²² *Pro veritate*, WA 1:630, lines 7–8, article 2. (My translation.)

²³ *Pro veritate*, WA 1:630, lines 13–14, thesis 5. (My translation.) Luther argued much the same in *Ein Sermon von dem Sakrament der Buße* (1519); WA 2:714, lines 12–20. He maintained that an indulgence or forgiveness of an ecclesiastically imposed penance only reconciled one outwardly with the Church, while forgiveness of guilt, what Luther called "heavenly indulgence" (*hymlicher ablaß*), removed the "fear and timidity of the heart before God and makes the conscience inwardly light and joyful and reconciles a person with God." Luther said that this latter forgiveness prevented sins from "biting a person or making him disquieted," because it provided him with a "joyful confidence" that God has forgiven his sins eternally. (My translation.)

²⁴ See discussion on pp. 388–393 below.

²⁵ Though Luther first publicly used the term *theology of the cross* [*theologia crucis*] at the Heidelberg Disputation (April 1518), he had already employed the phrase in the *Explanations of the Ninety-Five Theses* (*Resolutiones disputationum de indulgentiarum virtute*), which was published after the Heidelberg Disputation but composed before it. (Luther prepared a draft of the *Explanations* in February 1518 but did not publish the treatise until August 1518.) See Brecht, *Martin Luther*, pp. 208–20.

²⁶ WA 1:613, line 21–614, line 27; LW 31:225–27.

put it in the *Heidelberg Disputation*, “Christ’s action and instrument.”²⁷ Theologians of the cross therefore embraced all manner of divinely imposed suffering as God’s chosen means of reducing human beings to nothing so that they could receive everything, including justification, from God as sheer gift.²⁸

Luther did not reject traditional penitential piety in the *Explanations*, including the belief in purgatory,²⁹ but he did sharply criticize abuses of traditional devotion, especially the way it was used to avoid divinely imposed suffering.³⁰ Luther wrote,

A theologian of the cross (that is, one who speaks of the crucified and hidden God), teaches that [divine] punishments, crosses, and death are the most precious treasury of all and the most sacred relics which the Lord of this theology himself has consecrated and blessed, not alone by the embrace of his most holy flesh but also by the embrace of his exceedingly holy and divine will, and he has left these relics here to be kissed, sought after, and embraced. Indeed fortunate and blessed is he who is considered by God to be so worthy that these treasures of the relics of Christ should be given to him; rather, who understands that they are given to him. For to whom are they not offered? As St. James says, “Count it all joy, my brethren, when you meet various trials [Jas 1:2].”³¹

Luther went on to lament the fact that so many people who went on pilgrimages to view sacred relics did not recognize “the true relic, namely, the sufferings and crosses which have sanctified the bones and relics of the martyrs and made them worthy of such great veneration.”³²

²⁷ *WA* 1:364, lines 15–16; *LW* 31:56.

²⁸ Lohse once referred to the *Explanations* as Luther’s “first true reformation writing.” Quoted in David Jonathan Terry, “Martin Luther on the Suffering of the Christian” (Ph.D. diss., Boston University, 1990), p. 158.

²⁹ See Craig Koslofsky, *The Reformation of the Dead: Death and Ritual in Early Modern Germany, 1450–1700* (New York, 2000), pp. 34–39. Koslofsky demonstrates that Luther did not finally condemn the doctrine of purgatory until 1530. But he also shows that already in the late 1510s and 1520s the reformer had transferred the sufferings of purgatory to this life. In other words, while Luther was slow to reject purgatory, from an early point on he made little use of the doctrine as traditionally conceived.

³⁰ In *A German Exposition of the Lord’s Prayer for Simple Laypeople* (*Auslegung deutsch des Vaterunsers für die einfältigen Laien*) (1519), Luther compared Christians who sought to avoid trials to knights who sought to avoid attack or combat. Luther asserted, “But where all is as it should be, trials will not pass us by, and we do not seek to avoid them, but to overcome them like a true knight.” *WA* 2:124, lines 1–12; *LW* 42:72–73.

³¹ *WA* 1:613, lines 23–32; *LW* 31:226.

³² *WA* 1:613, lines 35–37; *LW* 31:226. On Luther’s critique of relic veneration see Terry, “Martin Luther on the Suffering of the Christian,” pp. 126, 189–90, 265–74, 288–89.

Such true relics were available to Christians every day, if only they had the faith to see and accept them, something the theology of glory rendered impossible.³³

Luther urged his contemporaries to embrace the true relic of suffering not so they could make atonement for sin, and this was the great difference between him and the late medieval tradition. Suffering was no longer salvific in the sense of meriting divine mercy. One could not "perform" it as a kind of work; one simply endured it as God's (alien) work. But suffering was still necessary in the Christian life: God used it first to drive one to Christ and then to conform one to the image of Christ.³⁴ As we have seen, suffering reduced a person to nothing and

³³ Luther frequently referred to suffering and the cross as true relics. For example, see *Fourteen Consolations* (*Tessaradecas consolatoria pro laborantibus et oneratis*) (1520), *WA* 6:118, line 38 to p. 119, line 6; *LW* 42:143. See also Rupp, "Luther's Ninety-Five Theses," p. 69; and Terry, "Martin Luther on the Suffering of the Christian," p. 141.

³⁴ See *That a Christian Should Bear His Cross With Patience* (*Das ein Christ das Creutz, so jm von Gott aufgelegt ist, mit Gedult tragen sol*) (1530), *WA* 32:547, line 21; *LW* 43:184; and *A Sermon on Suffering and the Cross* (*Sermon vom Leiden und Kreuz*) (1530), *WA* 32:28, line 28 to p. 29, line 17; *LW* 51:198. See also von Loewenich, *Luther's Theology of the Cross*, pp. 117–23. Luther was far more concerned with urging Christians to follow after Christ in the way of the cross than is typically appreciated. So much is made of Luther's "Reformation breakthrough" that relatively little attention is given to his numerous discussions of how evangelical soteriology included provision for the ongoing conforming of the Christian to the image of Christ. Christians were to imitate Christ, whose humanity, according to Luther's 1518 edition of the *German Theology* (*Theologia Germanica*), was simply a "house or a habitation for God"; see Bengt Hoffman, trans., *The Theologia Germanica of Martin Luther*, *The Classics of Western Spirituality* (Mahwah, N.J., 1980), p. 77. Suffering facilitated this process of "domesticating" the Christian. The great difference between Luther and much of the late medieval *imitatio* tradition was the former's reliance on the Augustinian belief that the Christian first had to know Christ as the sole means of grace (*sacramentum*) before he could adopt Christ as a model for his life (*exemplum*). In other words, the Christian was not to depend on her own resources to imitate Christ but was to rely entirely upon Christ's action in her to conform her to the way of the cross. Human agency and, especially, considerations of human merit, had no place in Luther's mature version of the *imitatio Christi*. For examples of Luther's use of the *sacramentum* and *exemplum* distinction, see his *Sermons on the First Epistle of St. Peter* (*Epistel Sancti Petri gepredigt und ausgelegt*) (1522), *WA* 12:372, line 16; *LW* 30:117; and his *A Meditation on Christ's Passion* (April 1519) (*Ein Sermon von der Betrachtung des heiligen Leidens Christi*), *WA* 2:141, lines 11–13; *LW* 42:13. See the following works on the importance of Christ as *sacramentum* et *exemplum* in Luther's theology: Erwin Iserloh, "Sacramentum et exemplum—Ein augustinisches Thema lutherischer Theologie," in Erwin Iserloh and Konrad Repgen, eds., *Reformata Reformanda: Festschrift für Hubert Jedin* (Münster, 1965), pp. 247–64; Martin Elze, "Das Verständnis der Passion Jesu im ausgehenden Mittelalter und bei Luther," in *Geist und Geschichte der Reformation: Festgabe Hanns Rückert zum 65. Geburtstag. Dargebracht von Freunden, Kollegen und Schülern* (Berlin, 1966), pp. 128–51; Brecht, *Martin Luther*, pp. 223–34; Lohse, *Martin Luther's Theology*, p. 222; Marc Lienhard, *Luther: Witness to Jesus Christ*, trans. Edwin H. Robertson (Minneapolis, 1982), p. 25; and Terry, "Martin Luther on the Suffering of

thus prepared the way for the gospel. In this respect it functioned like the Law. Central to the annihilating work of suffering was the humbling of human reason. Luther was very clear that if a person relied on reason to assess God's attitude toward him, he would inevitably wind up concluding either that God did not exist or that God was a cosmic misanthrope.³⁵ Luther was not interested in the problem of theodicy—for him, humanity was on trial, not God—³⁶ but he was keenly aware of how difficult it was to believe that God was good in the midst of suffering and injustice. Rather than presenting suffering as God's gracious provision for reducing time in purgatory, Luther viewed it as a divine summons to faith.³⁷ In the midst of suffering the

the Christian," p. 41. Luther had already employed this Augustinian distinction in the *Lectures on Romans* and the *Lectures on Hebrews* (Terry, "Martin Luther on the Suffering of the Christian," pp. 129, 144, and 147). However, he adapted the distinction to suit his purposes of differentiating his new soteriology from late medieval Passion piety; see Elze, "Das Verständnis der Passion," pp. 146–51. For a more recent examination of Luther's relationship with late medieval Passion piety see Robert Guy Erwin, "The Passion and Death of Christ in the Piety and Theology of the Later Middle Ages and Martin Luther" (Ph.D. diss., Yale University, 1999).

³⁵ Luther asserted the following in *On the Bondage of the Will* (*De Servo Arbitrio*) (1525): "As you can see, God so orders this corporal world in its external affairs that if you respect and follow the judgement of human reason, you are bound to say either that there is no God or that God is unjust. As the poet says: 'Oft I am moved to think there are no gods!' For look at the prosperity the wicked enjoy and the adversity the good endure.... Tell me, is it not in everyone's judgement most unjust that the wicked should prosper and the good suffer? But that is the way of the world. Here even the greatest minds have stumbled and fallen, denying the existence of God and imagining that all things are moved at random or blind Chance or Fortune.... Yet all this, which looks so very like injustice in God, and which has been represented as such with arguments that no human reason or light of nature can resist, is very easily dealt with in the light of the gospel and the knowledge of grace, by which we are taught that although the ungodly flourish in their bodies, they lose their souls." See *On the Bondage of the Will*, in E. Gordon Rupp and Philip S. Watson, eds., *Luther and Erasmus: Free Will and Salvation*, The Library of Christian Classics, Ichthus ed. (Philadelphia, 1969), pp. 330–31. See *WA* 18:784, lines 36–40, and 785, lines 3–6 and 12–16.

³⁶ See Werner Otto, *Verborgene Gerechtigkeit: Luthers Gottesbegriff nach seiner Schrift De servo arbitrio als Antwort auf die Theodizeefrage* (Frankfurt am Main, 1998), pp. 265–71.

³⁷ Luther makes an explicit connection between suffering and the testing of faith in the *Sermons on the First Epistle of St. Peter* (1522). When commenting on the proving and refining of faith through "fire" in 1 Peter 1:7–8, Luther asserts, "Thus God has imposed the cross on all Christians to cleanse and purge them well, in order that faith may remain pure, just as the Word is, so that one adheres to the Word alone and relies on nothing else. For we really need such purging and affliction every day because of the coarse old Adam" (*WA* 12:273, lines 4–12; *LW* 30:17). Later in the text Luther says that suffering is necessary in the Christian's life because it provides her with the opportunity to witness the full power of the gospel, which is always most potent when confronted with its opposite, death. Luther writes, "God lays a cross on all believers in

Christian was to trust what the Word said about God—that he was good—rather than what reason concluded, that he was not.³⁸ One was to see Christ in one's tribulations, suffering with and for sinners as an expression of God's fatherly love.³⁹ Suffering was still ultimately an expression of divine benevolence, but the uses and interpretation of it had changed rather dramatically.

Luther readily admitted that this Word-based epistemology was very difficult to learn. In a later treatise he referred to it as "the Christian art"—a skill that took considerable practice and grace to master. He wrote, "[f]or this is the Christian art, which we must learn, the art of looking to the Word and looking away from all the trouble and suffering that lies upon us and weighs us down. The flesh is utterly incapable of this art, it sees no farther than the present suffering."⁴⁰ The reward for mastering this art was true knowledge of God; the penalty for failing to do so was despair.⁴¹ As Luther asserted in the *Heidelberg Disputation*, "God can be found only in suffering and the cross..."⁴² Embracing the true relic of suffering by faith provided one with sure access to the heart of God.

An essential part of learning the Christian art of suffering was rejecting most traditional devotional practices.⁴³ Luther thought late medieval piety erred in at least three ways: it encouraged works of righteousness by demanding self-imposed suffering; it promoted spiritual laxity by

order that they may taste and prove the power of God—the power which they have taken hold of through faith." (WA 12:381, line 32 to p. 382, line 2; LW 30:126–27).

³⁸ "And although the inscrutable goodness of the divine will is hidden (as is God himself) from the old Adam as something so great and profound that man finds no pleasure in it, but only grief and lamentation, we nevertheless have his holy and sure Word which reveals to us this hidden will of his and gladdens the heart of the believer. For it is written everywhere in the Scriptures that when he chastises his children, he does so out of pure grace and not wrath"; Tappert, *Letters of Spiritual Counsel*, p. 69.

³⁹ See Terry, "Martin Luther on the Suffering of the Christian," pp. 38, 78, 220; von Loewenich, *Luther's Theology of the Cross*, p. 113; and Althaus, *The Theology of Martin Luther*, pp. 28, 204, 208.

⁴⁰ *Sermon on the Cross and Suffering* (1530), WA 32:34, lines 10–12; LW 51:203. Luther used similar language elsewhere. See Althaus, *The Theology of Martin Luther*, p. 32; and Terry, "Martin Luther on the Suffering of the Christian," p. 322.

⁴¹ See McGrath, *Luther's Theology of the Cross*, pp. 150–51; and Terry, "Martin Luther on the Suffering of the Christian," p. 323.

⁴² WA 1:362, line 28; LW 31:53. Althaus notes that suffering here refers to both Christ's and the Christian's. See *The Theology of Martin Luther*, p. 27.

⁴³ As indicated above, this rejection of traditional piety was a gradual process for Luther.

providing means of avoiding or escaping divinely imposed suffering;⁴⁴ and it encouraged a superstitious attachment to material objects. In place of traditional piety Luther posited the Word and Word-based rituals to help Christians cope with suffering. He frequently recommended participation in the Lord's Supper for those undergoing tribulation. In the Eucharist, one had visible signs of God's favourable disposition toward believers.⁴⁵ Luther also recommended private confession to those burdened by trials.

Luther emphasized again and again that the only way to escape despair as one faced suffering was to be confident of the goodness of God *pro me*.⁴⁶ The source of this confidence was the divine promise of forgiveness offered to sinners as a gift of sheer grace. In other words, it was the power of the keys, which Luther dubbed in the *Ninety-Five Theses* "the true treasure of merit."⁴⁷ For Luther, the most effective means of applying the benefits of this treasure to the individual Christian was through private confession. In a 1533 letter to the Nürnberg city council on the relationship between general and private confession, Luther urged that private confession be retained because of its value for conveying the gospel to individual consciences. Luther wrote, "one must

⁴⁴ "[Some people] carry pictures and booklets, letters and booklets [about the Passion] on their person. Some who travel afar do this in the belief that they thus protect themselves against water and sword, fire, and all sorts of perils. Christ's suffering is thus used to effect in them a lack of suffering contrary to his being and nature"; *A Meditation on Christ's Passion*, WA 2:136, lines 16–20; LW 42:7. One interesting aspect of Luther's critique of traditional piety was his insistence that Christians should not seek miraculous deliverance from suffering. Suffering was an expression of divine grace, and Christians therefore were to embrace it. See Terry, "Martin Luther on the Suffering of the Christian," p. 105. For a discussion of Luther's and other reformers' attitudes toward miracles, see Philip M. Soergel, "Miracle, Magic, and Disenchantment in Early Modern Germany," in Peter Schäfer and Hans G. Kippenberg, eds., *Envisioning Magic: A Princeton Seminar and Symposium* (Leiden, 1997), pp. 215–34; and D. P. Walker, "The Cessation of Miracles," in Ingrid Merkel and Allen G. Debus, eds., *Hermeticism and the Renaissance: Intellectual History and the Occult in Early Modern Europe* (London and Toronto, 1988), pp. 111–24.

⁴⁵ See the discussion of *A Sermon on Preparing to Die* and *The Blessed Sacrament of the Holy and True Body of Christ, and the Brotherhoods* in Terry, "Martin Luther on the Suffering of the Christian," pp. 207–28.

⁴⁶ See Tappert, *Letters of Spiritual Counsel*, p. 54; and Terry, "Martin Luther on the Suffering of the Christian," p. 390.

⁴⁷ Luther wrote in thesis 59, "St. Laurence said that the poor of the church were the treasures of the church, but he spoke according to the usage of the word in his own time." Then in thesis 60 the reformer asserted, "Without want of consideration we say that the keys of the church, given by the merits of Christ, are that treasure"; WA 1:236, lines 16–19; LW 31:31, thesis 60.

instruct consciences that the consolation of the gospel is valid for each person individually, and therefore one must apply the gospel through word and sacrament in particular to each person. As you wise ones know, each conscience struggles to believe that this immense [gift of] grace offered by Christ [actually] belongs to it."⁴⁸ Thus, the primary reason Luther wished to retain a modified version of private confession was to offer relief to consciences plagued by *Anfechtungen*. When his former colleague, Andreas Bodenstein von Karlstadt, attempted to abolish private confession in Wittenberg in 1522, Luther returned from the Wartburg and preached that the practice should be retained, albeit as a voluntary rite. Luther insisted,

I will allow no one to take private confession from me and would not give it in exchange for all the wealth of the world. For I know what consolation and strength it has given me. No one knows what it can give unless he has struggled much and frequently with the devil. I would have been strangled by the devil long ago if confession had not sustained me.⁴⁹

Luther went on to assert, "We must have much absolution so that we may strengthen our fearful consciences and despondent hearts against the devil. Therefore no one should forbid confession."⁵⁰

For Luther, the most difficult divine punishment to bear was the consciousness of sin and the concomitant fear of death. As he argued in *On Investigating the Truth and Consoling Fearful Consciences* (1518), "The remission of guilt calms the heart and takes away the greatest of all punishments, namely, the consciousness of sin."⁵¹ In the *Explanations of the Ninety-Five Theses* (1518), Luther described the fear of death as the "punishment of punishments," which in most cases is worse than death itself.⁵² Private confession provided both release from a guilty conscience and confidence of God's goodness in the face of other divine chastisements. It was indispensable as one endeavoured to learn the Christian art of suffering.

⁴⁸ *D. Martin Luthers Werke: kritische Gesamtausgabe: Briefwechsel*, 18 vols (Weimar, 1930) [hereafter *WABr*], 6:454, line 19–455, line 30. (My translation.)

⁴⁹ *WA* vol. 10, part 3, p. 62, lines 1–2. (My translation.)

⁵⁰ *WA* vol. 10, part 3, p. 62, lines 9–10. (My translation.)

⁵¹ *Pro veritate*, *WA* 1:630, lines 7–8, article 2. (My translation.)

⁵² *Explanations*, *WA* 1:534, lines 16–18; *LW* 31:89, para. 4. For a recent treatment of attitudes toward death in the German Reformation, see Claudia Resch, *Trost im Angesicht des Todes: Frühe reformatorische Anleitungen zur Seelsorge an Kranken und Sterbenden* (Tübingen and Basel, 2006).

Of course, when Luther recommended private confession to those burdened by spiritual trials, he did not have in mind the traditional sacrament of penance. Already in the late 1510s, he had sought to effect important changes in the traditional rite, changes informed by his evangelical soteriology. Luther endeavoured to transform the sacrament of penance into a rite that emphasized not contrition or works of satisfaction but absolution. The emphasis was on consolation.⁵³

Luther and his fellow reformers quickly reached a consensus about what they wished to remove from the traditional sacrament of penance as they sought to construct a new evangelical rite.⁵⁴ They would not allow the traditional interrogation of conscience, nor would they allow the concomitant insistence that penitents make a full or complete confession (i.e., one in which they confessed every mortal sin to their priests). The reformers also rejected the effort to assess sufficient degrees of sorrow for sin along with the assigning of penances. Perhaps most important, the reformers insisted that priests could no longer be seen as the sole holders of the power of the keys. Luther and his fellow reformers saw each of these defining elements of the sacrament of penance as creations of a man-made religion that had oppressed lay consciences by denying them access to the gospel.

Dismantling the traditional practice proved far easier than constructing its replacement. It took several years for Protestant reformers to develop an evangelical alternative to the sacrament of penance.⁵⁵ However, by the early 1530s, Luther and his fellow reformers had settled on a reformed version of private confession. At the Diet of Augsburg (1530), Philip Melanchthon presented the emperor with a summary of the evangelical faith that contained important references to the new rite. In article 11 Melanchthon wrote, "Concerning confession it is taught that private absolution should be retained and not abolished. However, it is not necessary to enumerate all misdeeds and sins, since it is not possible to do. Psalm 19[12]: 'But who can detect their errors?'" In article 25 Melanchthon stated that those "who have not previously been examined and absolved" would not be allowed to participate in the Lord's Supper.⁵⁶ Luther was in full agreement with both articles.

⁵³ See Rittgers, *Reformation of the Keys*, pp. 52–58.

⁵⁴ See Rittgers, *Reformation of the Keys*, ch. 3.

⁵⁵ See Rittgers, *Reformation of the Keys*, chs 4–5.

⁵⁶ *The Augsburg Confession*, in Robert Kolb and Timothy J. Wengert, eds., *The Book of Concord: The Confessions of the Evangelical Lutheran Church* (Minneapolis, 2000), p. 44,

Soon there emerged in Lutheran Germany a large number of church orders that sought to translate the faith of the Augsburg Confession into reality in evangelical communities. These orders were written guides for worship and belief that had the force of law, being issued by princes and city councils. Nearly all of them contained a section on private confession that took its cue from Luther and the Augsburg Confession. Though there were some differences in emphasis from one church order to the other in their treatment of the new rite, the vast majority were agreed on the essentials of evangelical private confession.⁵⁷

The new rite had two parts: an examination of faith (*Glaubensverhör*) followed by a confession of sin and absolution. The examination of faith, initially separated from the confession of sin and absolution,⁵⁸ replaced the traditional interrogation of conscience and consisted of an inquiry into the confessant's knowledge of the Lutheran catechism. The examination was part of a larger effort among leaders of the evangelical movement to teach the essentials of the new faith to the common folk. Those who did not evidence sufficient knowledge of the catechism were not allowed to participate in the Lord's Supper. The examination of faith did not occur every time a person went to confession. Luther allowed that once a confessant had persuaded her pastor that she knew the catechism, she was not to be examined again.⁵⁹ In such cases, the second part of the new ritual became primary.

Confessants were required to acknowledge their sinful nature, along with any public sins they had committed—a person could be barred from the Lord's Supper for leading an openly sinful and unrepentant lifestyle—but the confession of secret sins was purely voluntary. Confessants were free to choose what they would reveal to their pastors; the Lutheran confessor was prohibited from prying into the confessant's conscience. As one evangelical church order put it, "here [i.e., in the courtroom of conscience] one must defer to God's jurisdiction (*man lasse*

article 11, and p. 72, article 25. See also Leif Grane, *The Augsburg Confession: A Commentary* (Minneapolis, 1987), pp. 127, 226.

⁵⁷ See Rittgers, *Reformation of the Keys*, ch. 6. See also Thomas Tentler, "Confession," in Hans J. Hillerbrand, ed., *The Oxford Encyclopedia of the Reformation* (New York and Oxford, 1996), vol. 1, p. 403.

⁵⁸ In his 1523 *Formula Missae et Communionis*, Luther treated the examination of faith and conduct separately from the confession of sins, which was still voluntary. *WA* 12:215, lines 18–23. In time the examination became the first part of a bipartite ritual.

⁵⁹ *Formula Missae et Communionis*, *WA* 12:215, lines 29–31.

da Got sein gericht).⁶⁰ When a person found it difficult to believe that God had forgiven her some private sin, she was then to ask her pastor for counsel and the direct application of the gospel to her troubled conscience. Luther hesitated to refer to such absolution as a sacrament,⁶¹ though he could say that confessants were to regard clerical forgiveness as if Christ himself were speaking.⁶² (There was no consensus on the sacramental status of private absolution in early modern Lutheranism.) At least in theory, Luther also left open the possibility of lay people confessing and absolving each other: the authority to forgive resided in the Word, not in an ordained priest, and thus could be exercised by any baptized Christian.⁶³ In practice, however, clerical absolution soon became the norm.

This new evangelical rite eventually became an accepted, important, and mandatory practice of Lutheran Christianity⁶⁴—as in the Catholic Church, confession preceded communion. Though private confession increasingly took on the role of moral discipline in Lutheran churches,⁶⁵ it continued to serve its original purpose of offering consolation, especially to those undergoing various forms of suffering. One Lutheran church order referred to private confession as the believer's most effective defense against "the great storm winds of Satan,"⁶⁶ which threatened to overwhelm her with temptation, discouragement, and fear. Following Luther, evangelical clergy continued to view private

⁶⁰ Veit Dietrich, *Agendbüchlein für die Pfarrherren auf dem Land* (1543), in Emil Schling, ed., *Die evangelischen Kirchenordnungen des XVI Jahrhunderts*, vol. 11, part 1 (Franken) (Tübingen, 1961), p. 529.

⁶¹ Luther famously restricted the number of sacraments to two—Baptism and the Lord's Supper—in the conclusion of the *Babylonian Captivity of the Church* (*De captivitate Babylonica ecclesiae*), after having treated private absolution as a third sacrament throughout the body of the work. His reason for denying absolution sacramental status was that it was simply a return to the grace of baptism, not a means of accessing grace beyond what baptism offered, as the Catholic Church taught. See *WA* 6:572, lines 10–34; and *LW* 36:124.

⁶² Luther wrote the following in *A Sermon on Preparing to Die* (*Ein Sermon von der Bereitung zum Sterben*) (1519): "You must trust in the priest's absolution as firmly as though God had sent a special angel or apostle to you, yes, as though Christ himself were absolving you"; *WA* 2:694, lines 14–16; *LW* 42:110.

⁶³ See *Ein Sermon von dem Sakrament der Buße* (1519), *WA* 2:716, lines 28–31, and 719, lines 16–18.

⁶⁴ See Ernst Bezzel, *Frei zum Eingeständnis: Geschichte und Praxis der evangelischen Einzelbeichte* (Stuttgart, 1982), p. 81.

⁶⁵ See Susan C. Karant-Nunn, *The Reformation of Ritual: An Interpretation of Early Modern Germany* (New York, 1997), pp. 94–107.

⁶⁶ *Die Brandenburg-Nürnberg Kirchenordnung* (1533), in Gerhard Müller and Gottfried Seebaß, eds. *Andreas Osiander d. A., Gesamtausgabe*, Bd. 5 (Gütersloh, 1983), p. 144, lines 13–16.

absolution as an extremely effective way of providing the faithful with confidence of divine forgiveness, even as they experienced seeming divine absence and wrath.

Luther endeavoured to strip his contemporaries of the means they had traditionally employed to help them cope with the suffering that was so much part of their existence. He thought these means were not authentically Christian, largely because they were based on the notion of penance. In Luther's scheme, a person was to reject all attempts at placating or making amends with the divine, and also all endeavours to discern in the events of one's life signs of heaven's favour or disfavour. One was also to repent of the desire for miraculous intervention.⁶⁷ Thus stripped, the Christian was simply to embrace suffering as God's alien work to conform her more closely to Christ, a sign of the divine fatherly goodness that was abundantly attested in Scripture. This Christian art of suffering required considerable faith. In order to nurture this faith, Luther urged (and eventually required) participation in a reformed version of private confession. Luther's reformation of penance thus produced a new rite that was intended to help believers embrace both the evangelical view of salvation and its concomitant understanding of human misfortune. The transformation of penance and attitudes toward suffering went hand-in-hand in the German Reformation; the new version of private confession developed by Luther and his followers both attests this connection and was intended to sustain it.

⁶⁷ See note 44 above.

LAY PIETY AND COMMUNITY IDENTITY IN THE EARLY MODERN WORLD

Gretchen Starr-LeBeau

How did the laity in western Europe—as well as new converts to Christianity in Europe, the Americas, and Asia—understand penance? This is an unanswerable question, at one level; lay religious practices and beliefs were never static or monolithic, and growing confessional differences in the 16th century provided renewed impetus for change. But it is possible to sketch out some of the range of attitudes among that diverse group of Christians. Most importantly, the rise of Protestantism and Catholic reform had fundamental consequences for how the laity envisioned personal salvation and imagined the collective well-being and hoped-for salvation of their community. For many of the laity, it appears, penance, as part of a larger practice of confession, penance, and consolation, was central to their participation in and understanding of their individual and collective religious lives. By examining lay perceptions of the meaning of penance, as refracted through the lenses of the recently (and sometimes unwillingly) converted on the one hand, and through the lenses of collective social and political interests, on the other, we can trace the changing status of this sometime sacrament.

Penance in the Age of Catholic Reform

Many devout laypeople embraced penitence in the late medieval and early modern period as part of a larger move toward more numerous and engaging acts of lay piety. Confraternities, those ubiquitous outgrowths and promoters of lay devotion, channelled the religious sentiment of their members toward devotional practices, such as more frequent (meaning monthly, or perhaps weekly, as opposed to annual or semi-annual) communion. Confession and the resulting penance were an essential prerequisite. Individual holy persons, from Margery Kempe in late medieval England to Luisa de Mendoza and Teresa de Avila in early modern Spain to the young friar Martin Luther, engaged in penitential practices as part of their public and private

devotions. Later, when Luther and other Protestant reformers criticized penitential works as inessential to a salvation gained solely by faith,¹ Catholics reaffirmed the centrality of penance to lay practices and to the community. Tracing lay Catholic notions of penance in the time of Catholic reform, therefore, is to attempt to outline a vibrant and multifaceted cluster of beliefs.

Central to any understanding of lay Catholic practices of penance is the ubiquity of penance in the lives of Catholic parishioners in early modern Europe. Most Catholics probably still confessed, were assigned penance, and communicated only once or twice a year. But penitential attitudes had pervaded religious life in western Europe at least since the 14th century, and the Black Death encouraged the rise of lay penitential movements. Penitential pilgrims, known as flagellants for their signal behaviour, travelled from city to city, expiating the sins of the world through the mortification of their own flesh. Although scholars have long noted the rise in lay penitential activity after 1348, penitential practices were a far more common part of everyday life than these extraordinary responses to plague might suggest. At any given time, individuals fulfilling their assigned penance might be visible in the streets. Travellers undertaking pilgrimages as a requirement of penance (another phenomenon on the rise in the late Middle Ages) were commonplace on the major thoroughfares, and some Catholic thinkers had begun linking pilgrimage itself to the examination of conscience required before partaking of the Eucharist.² In addition, early modern Catholics were familiar with related practices that added features to the “penitential terrain”; for example, towns and villages frequently engaged in fasts on the eves of locally significant saints’ days.³ Many others fasted individually, in fulfilment of a vow to a saint or advocacy of the Virgin Mary.⁴

¹ See Ron Rittgers’s essay in this volume, as well as his book, *The Reformation of the Keys: Confession, Conscience, and Authority in Sixteenth-Century Germany* (Cambridge, Mass., 2004).

² See the *converso* assigned to undertake a pilgrimage to Guadalupe as penance for Judaizing, in Gretchen Starr-LeBeau, *In the Shadow of the Virgin: Inquisitors, Friars, and Conversos in Guadalupe, Spain* (Princeton, 2003), *passim*. On new ideas of pilgrimage for the examination of conscience, see Philip M. Soergel, *Wondrous in his Saints: Counter-Reformation Propaganda in Bavaria* (Berkeley, 1993), p. 119.

³ William Christian, *Local Religion in Sixteenth-Century Spain* (Princeton, 1981), pp. 55–58.

⁴ See miracles of Virgin of Guadalupe, Biblioteca de El Escorial, cod. A-IV-10.

Confraternities were perhaps one of the better organized disseminators of reinvigorated penitential practice. These groups, predominantly though not necessarily comprised of lay members, focused their efforts on devotional practices and good works by members, including social services for the broader community. Some, known as *disciplinati*, or flagellants, emphasized penitential practices such as mortification. Others emphasized frequent confession and communion, which also had the effect of encouraging more frequent confession and penance. In any event, confraternities were, like penance itself, a commonplace of late medieval and early modern religious life. In cities they were particularly noticeable, as large numbers of confraternities competed in almsgiving, prestige of members, and for pride of place in local processions. Numerous social services were provided by the devout members of these groups. In some cases, as with the Oratory of Divine Love in Italy, groups grew to have several branches in many important cities, and even in this case inspired the creation of the reform-minded priestly order of the Theatines.⁵

While penitential practices were a frequent and important part of local, lay Catholicism, not all Catholics were amenable to the idea. Resistance to performing penance appears sporadically in the documentary record. Domenico Scandella, or Menocchio, the inquisitorial victim made famous by Carlo Ginzburg in *The Cheese and the Worms*, could generally be relied upon to rain scorn down upon the structures and practices of the institutional Church, and confession and penance were no exception: "You might as well go and confess to a tree as to priests and monks." Later he explained that "if some men seek out priests because they do not know what penance has to be made for their sins in order that the priests may teach it to them, if they had understood this matter, there would be no need to go to them; and for those who already know it, it is useless." Ginzburg notes that Menocchio wanted the latter to confess "to the majesty of God in their hearts, and beseech him to forgive their sins."⁶ Bartolomé Sánchez, a

⁵ See *Religious Orders of the Catholic Reformation. In Honor of John C. Olin on his Seventy-Fifth Birthday*, ed. Richard DeMolen, (New York, 1994), pp. 1–7. On confraternities, see also *Confraternities & Catholic Reform in Italy, France, & Spain*, ed. John Patrick Donnelly and Michael W. Maher (Kirkville, Mo., 1999); Nicholas Terpstra, *Lay Confraternities and Civic Religion in Renaissance Bologna* (Cambridge, 1995); Maureen Flynn, *Sacred Charity: Confraternities and Social Welfare in Zamora, 1400–1700* (Ithaca, N.Y., 1988).

⁶ Carlo Ginzburg, *The Cheese and the Worms: The Cosmos of a Sixteenth-Century Miller* (Harmondsworth, 1982), p. 10.

16th-century Castilian wool-carder, was similarly hostile to institutional Christianity and held an equally dim view of confession and penance. When the "Elijah-Messiah," as he fashioned himself, was brought before the inquisitors, he told them what he had told his family and friends beforehand: that all priests, including the pope, were damned, and that therefore people should confess to God in the countryside rather than to priests: "I will declare and confess these things to Almighty God, who is the one who will save me, and not to any friar or abbot, because God knows the circumstances of my sin, and not the friar or abbot. I should reveal my heart to the one who must save me, and not to someone who cannot help me."⁷ Obviously, these two men were highly unusual, but their opinions on confession and penance may not have been. John Edwards draws parallels between the arguments of one of these men and the sentiments of Sorian villagers deposed by the Spanish inquisition in the late 15th century. He quotes one man as saying it was as worthwhile to confess in a stable as to a priest.⁸ One woman who testified before the inquisition in Guadalupe, Spain, despaired over the way words spoken in confidence in the confessional were later repeated from the pulpit, and she lamented that confessing should be like shouting into a hole.⁹

Yet despite these naysayers, the practice of penance and confession seems to have had a growing hold on many early moderns. Why were penitential practices so important to so many lay Catholics in this period? For some, penitential practices, including the sacrament of confession, were a means of resolving individual, internal anxieties about one's salvation. For all their differences, Martin Luther and Ignatius of Loyola shared a common fear about the state of their souls and the sufficiency of their repentance.¹⁰ Their crises of conscience were not typical, but neither were they unique. Confession and penance, and particularly the direction of a confessor, were especially important for

⁷ Sara Nalle, *Mad for God: Bartolomé Sánchez, the Secret Messiah of Cardenete* (Charlottesville, 2001), pp. 24, 32.

⁸ John Edwards, "Religious Faith and Doubt in Late Medieval Spain: Soria circa 1450–1500," *Past and Present* 120 (Aug. 1988), 3–25, esp. 22.

⁹ Starr-LeBeau, *In the Shadow of the Virgin*, passim.

¹⁰ John O'Malley, *The First Jesuits* (Cambridge, Mass., 1993), p. 139; Lawrence Duggan, "Fear and Confession on the Eve of the Reformation," *Archive for Reformation History/Archiv für Reformationsgeschichte* 75 (1984), 153–75.

women, who were perceived as susceptible to “false spirits.”¹¹ Confraternities, as mentioned above, encouraged more frequent confession and communion as a devotional practice, encouraging the laity to find solace in discussing their sins with a confessor. Unsurprisingly, the Jesuits, under the direction of their founder Loyola, advocated more frequent examination of conscience (the so-called “general confession”) and consumption of the Eucharist for those lay people following the *Spiritual Exercises*. The Jesuits were particularly known for their consolation in the confessional, as no less a penitent than Teresa of Avila noted from her personal experience in her *Autobiography*.¹² These institutions, and other smaller ones like them, therefore, encouraged penance, confession, and communion as a means of resolving individual religious anxieties, and this seems to have had a signal effect on lay piety.

This move toward a greater individual desire for confession and communion among lay Catholics was concomitant with an increased theological emphasis on intentions, as opposed to acts, in the later Middle Ages and early modern period. The relative significance of intention, and whether the emphasis on intention had truly increased in the 15th and 16th centuries, is a contentious one.¹³ For our purposes, it is sufficient to note that the historiography generally agrees that an anxiety about intention and interior motivations not only existed in the Reformation period but also was on the rise. This emphasis on intention and interior motivation is evident in a number of sites. Inquisitors, for example, were preoccupied with determining the intentions of the accused person’s acts, rather than enumerating heretical acts per se. Indeed, for some penitent sinners who voluntarily appeared before the inquisitors, the entire inquisitorial procedure functioned as an extended penitential practice.¹⁴ In accord with this concern, Catholic reform of

¹¹ Anne Jacobson Schutte, *Aspiring Saints: Pretense of Holiness, Inquisition, and Gender in the Republic of Venice, 1618–1750* (Baltimore, 2001). See also Jodi Bilinkoff’s essay in this volume.

¹² See Jodi Bilinkoff, *The Avila of Saint Teresa* (Ithaca, N.Y., 1989), pp. 119–23. As Bilinkoff notes, the Jesuits became important personal advisors and confessors to Teresa.

¹³ The main historiographical sources of interest here are John Bossy, “The Social History of Confession in the Age of the Reformation,” *Transactions of the Royal Historical Society*, 5th series 25 (1975), 21–38; Thomas Tentler, *Sin and Confession on the Eve of the Reformation* (Princeton, 1977); Jean Delumeau, *Sin and Fear: The Emergence of a Western Guilt Culture, 13th to 18th Centuries* (New York, 1990); and Duggan, “Fear and Confession.”

¹⁴ An interesting discussion about social discipline and penance as an appealing means of reform appears in David Graizbord, *Souls in Dispute: Converso Identities in Iberia*

penitential practices—such as the slow establishment of private confession, increased oversight of confessors, and increased vigilance of penitents to ensure annual confession, penance, and partaking of the Eucharist—were institutional shifts that may have guided further the devotional directions of the laity.

Yet such reforms were not intended solely to assuage individual consciences; they were also intended to reform the Church and to influence the community as a whole. Many of the reforms described above, for example, were early established by archbishop Carlo Borromeo in Milan as a way of strengthening the institutional health of the Church and communicating the Church's teachings better to the laity. In addition, Borromeo's agenda was also an instrument of social discipline, exerting (somewhat successfully) enormous pressure on the community as a whole to alter a range of behaviours, including impious actions, such as dancing on Sundays and feast days, or potentially dangerous practices, such as sleeping with infants.¹⁵

In other communities, the sacrament of penance, linked with the sacrament of the Eucharist, was essential to defusing strife and maintaining peace among residents. Penance thus played a role in the political dynamic of early modern communities. Elements of religious penance were, on some occasions at least, part of the process of reconciliation after the suppression of local revolts. This was certainly true in the case of towns and villages run by religious orders or secular clergy. In the town of Guadalupe in western Spain, for example, the 15th and early 16th centuries were punctuated by violent local uprisings and factional strife. Once the friars had successfully quelled these disturbances, the renewed peace was signified ritually by a public pardon that mimicked in key respects penitential practices. All the citizens were required to appear before local officials on their knees, with those found culpable indicated by their bare feet. "Collectively, the town publicly acknowledged its errors and guilt and begged for mercy. After a long, harsh

and the *Jewish Diaspora, 1580–1700* (Philadelphia, 2004). His focus is on descendants of Spanish Jewish converts to Christianity who for a time reverted to Judaism, only voluntarily to return later to orthodox Christian practice, often by volunteering to confess before the inquisitors.

¹⁵ See Wietse de Boer's essay in this volume, as well as his "The Politics of the Soul: Confession in Counter-Reformation Milan," in *Penitence in the Age of Reformations*, ed. Katherine Jackson Lualdi and Anne Thayer (Aldershot, 2000), pp. 116–33; and his book, *The Conquest of the Soul: Confessions, Discipline, and Public Order in Counter-Reformation Milan* (Leiden, 2001).

sermon pointing out that the proper sentence was death, the prior pardoned his townspeople.”¹⁶ The townspeople of Guadalupe then swore not to engage in any disobedient or rebellious behaviour. This “political penance” must have seemed quite familiar.

Just as political events took on a religious cast in the hands of authorities who were religious leaders as well as political ones, so too strictly religious events, such as individual confession and penance, could become imbued with political significance. For townspeople in Guadalupe, confession before the Jeronymite friars who controlled the town was never solely a religious event, nor could one reasonably expect it to be. The men elected to serve as confessors for the friary were important leaders in the religious house and, by extension, in the town as well. The opportunity to speak with them, therefore, was an opportunity to voice concerns with one’s lord at the same time that one begged forgiveness for one’s sins. Recently, scholars have discussed the importance of understanding confession and penance as a dialogue, and this political recasting of confession merely underscores that point.¹⁷ Each side appears to have seen confession as an opportunity to counsel or complain to the other, and neither confessor nor penitent seems to have observed a strict boundary between sacred and secular matters. Friars sometimes volunteered advice to penitents on adopting different attitudes to daily affairs, or exhorted penitents to treat particular neighbours more respectfully. Penitents, in turn, complained to their confessors about neighbours or even other friars whose behaviour they found inappropriate.¹⁸ Because this information was recorded in inquisitorial files, the complaints centred on the Judaizing behaviour of friars and residents. But it is likely that these were only a small number of the comments that penitents, in particular, shared in the confessional with their secular lords.

Penance, like so much of corporate Christian life, must have suffused lay understandings of all aspects of daily life. Indeed, penitential sentiments are evident even in the religious understandings of the sometimes-unwilling Jewish converts to Christianity and their descendants. The religiosity of these so-called “New Christians” or *conversos* is the subject of a long and heated debate. We are on relatively uncontested ground,

¹⁶ Starr-LeBeau, *In the Shadow of the Virgin*, p. 128.

¹⁷ See, for example, de Boer, “The Politics of the Soul.”

¹⁸ Starr-LeBeau, *In the Shadow of the Virgin*, pp. 36, 215, 220–21.

however, if we posit that various New Christians expressed a variety of religious sentiments of both Jewish and Christian cast, both individually and collectively, and that from the 15th to the 18th centuries there were additional shifts, as many *conversos* assimilated into Christian religious and social life, while others maintained an affinity for Judaizing practices, some even travelling to southern France or the Netherlands to assimilate into normative Judaism.¹⁹ Evaluating the validity of sources about the religious practices of *conversos* is equally contentious, but accumulated evidence has allowed scholars to identify trends in Judaizing in early modern Iberia.

What is most interesting, from the standpoint of penitential practice, is the extent to which penance formed a central element of Judaizing practice as New Christians described it. Yom Kippur, the Jewish day of atonement and one of the most important Jewish holidays, was observed by many Judaizers. Many accused by the inquisitors volunteered that they observed “the great fast” by abstaining from food and drink for the day and that they understood the day to have an expiatory significance.²⁰ But other Jewish practices were mined for expressions of penitential piety as well. New Christians frequently mention observing Monday and Thursday penitential fasts, an atypical Jewish practice but one seized upon by *conversos* anxious about their uncertain status straddling the Christian and Jewish worlds.²¹ New Christians who wished to observe Judaism were on particularly shaky legal ground, as both rabbinic *responsa* and Christian sources made clear. Penitential fasting for incomplete observance of Judaism was a solution born out of a largely Christian environment. The anxiety about their status as Jews was a Jewish problem, and the fasts had Jewish precedents, but *converso* conceptualization of this anxiety was much more strongly reminiscent of Christian notions of sin and penance than traditionally Jewish ones.

¹⁹ A few recent references in regard to this historiography include Pilar Huerga Criado, *En la raya de Portugal: solidaridad y tensiones en la comunidad judeoconversa* (Salamanca, 1993); Graizbord, *Souls in Dispute*; Linda Martz, *A Network of Converso Families in Early Modern Toledo* (Ann Arbor, 2003); and Yirmiyahu Yovel, “The New Otherness: Marrano Dualities in the First Generation,” Swig Lecture, Swig Judaic Studies Program (San Francisco, 1999).

²⁰ See David M. Gitlitz, *Secrecy and Deceit: The Religion of the Crypto-Jews* (Philadelphia, 1996), pp. 357–71.

²¹ See numerous references in Haim Beinart, *Conversos on Trial: The Inquisition in Ciudad Real* (Jerusalem, 1981); and Starr-LeBeau, *In the Shadow of the Virgin*.

Other Judaizing practices reflect Christian highlighting of penance as well. One *converso*, Manuel González, who ran an inn with an apparently kosher kitchen in Guadalupe, seems to have asked visiting Jews to write down remembered psalms for him to use in his secret, Jewish devotions. The small book was seized by the inquisitors and sewn into his permanent file, so we can still see its many differing hands and the multitude of semi-Jewish penitential psalms. They reflect the emphasis on penance and reconciliation that was so much a part of Iberian Judaizing.²² New Christians frequently cobbled together half-remembered prayers and psalms, and then confidently told others that by reciting these they would be “saved,” a Christian concept with no clear Jewish equivalent. Inés de Herrera, a *conversa* who had mystical visions around the year 1500 foretelling the salvation of all *conversos*, was equally imbued with Christian notions of penance and salvation. At age 12, Inés began to have visions of her mother visiting her from purgatory, and of *converso* martyrs seated on golden thrones at the highest level of heaven, and of *converso* spouses for all *conversa* girls. She fasted until nightfall, as Jews did (unlike Christians, who broke their fasts earlier in the day), but broke her fasts with fish, as Christians did. The messianic nature of her visions and the picture of a kind of Jewish purgatory that she created suggest her dependence at least in part upon Christian models of religiosity. Perhaps most notably, both the fact and the methods of her fasting corresponded closely with Christian notions about female spirituality in the early modern era.²³ Christian theological concepts such as these—learned from sermons, art, and plays or popular literature—must have been so commonplace as not to raise criticism even from those who held themselves in opposition to Christian theology generally.

In short, penance was at the heart of lay notions of religiosity in the early modern Catholic world, even as most broadly defined. Catholic Reform and the Counter-Reformation may have altered the forms of penitential practice somewhat, encouraging private confessions and more frequent penance, confession, and communion, but the notion of penance itself as a central feature of religious life remained largely

²² See Archivo Histórico Nacional, sección Inquisición, legajo 154, expediente 24. This trial was transcribed in Fidel Fita, “La inquisición en Guadalupe,” *Boletín de la Real Academia de la Historia* 23 (1893), 283–343.

²³ See Sharon Faye Koren, “A Christian Means to a Conversa End” *Nashim: A Journal of Jewish Women’s Studies and Gender Issues* 9 (Spring 5765/2005), 27–61.

unquestioned through the 16th century. It is hardly surprising, then, that as the Catholic Church reached out to spread the word in Asia and the Americas, penance and penitential practices were among the missionaries' earliest lessons.

*Catholic Missionizing and Penitential Practices
in the Americas and Asia*

As Catholic missionaries extended their reach to the Americas and Asia, they took their concern for penance to a new lay community. On both continents, however, the notion of penance was fundamentally altered by a newly converted laity that had no comparable tradition of sin, confession, and reconciliation. While Europe's laity held beliefs about penance that were moulded by centuries of contact with Christianity, newly converted Christians on other continents brought a radically different understanding to the practices advocated by the friars and other clergy. As exterior practices, penance seemed recognizable to indigenous peoples in Asia and the Americas. What was missing was the way in which penitential practices for Christians were embedded in a unique set of beliefs about the relationship between God and man. Missionaries hoping to ascertain their level of success in these new fields of labour thus discovered new challenges in determining what converts thought they were doing. Newly converted lay people, by contrast, gained a new understanding of the world around them, but one sometimes more and sometimes less linked to what they had understood before.

In comparing penitential practices across such a wide physical and cultural space as the newly converted indigenous peoples of South, Central, and North America and Asia, definitive conclusions are limited by the secondary sources available. Furthermore, differences in tone in secondary sources—optimism or pessimism about conquest and the colonial project, about indigenous agency, and about the relationship between European religious clergy and their local parishioners—often reflect the broader historiography of that region in general. For example, historical writing about indigenous peoples in the Valley of Mexico can often be more positive than historical writing about Andeans. In part, the gloomier picture painted by Andeanists reflects the more negative experience of native Andeans; but it also reflects the interests and historiographical trajectory of writing about that region. Similarly, Asian

historians who write about Europeans in Asia are more removed from a missionary historiography that casts events in either an “optimistic” or “pessimistic” light (be that optimism or pessimism focused on the “success” of the missionizing project or the “successful” resistance of indigenous people to physical authority and cultural imperialism).

Mexico was the first site of sustained missionary activity after initial forays by Europeans into the Caribbean, and it was there that the most utopian vision of missionizing activity took hold.²⁴ Cortés completed the initial phase of conquest of the Valley of Mexico in 1521. Three years later, he welcomed the first twelve Franciscan missionaries—the so-called “twelve apostles”—to Tenochtitlan, now Mexico City. John Leddy Phelan has referred to many in the first generations of missionaries as “pro-Indian” and makes the point in his classic work that one part of that pro-Indian faction understood their work in the Americas to be part of a millenarian project, ushering in the last days.²⁵ Whether expressed in the apocalyptic vision of a Gerónimo de Mendieta or in the more pragmatic efforts of a Bernadino de Sahagún, however, the first generation of missionaries shared a largely optimistic vision of their work among indigenous people. From their base in Mexico City, Franciscans, Dominicans, and Augustinians spread out and learned indigenous languages, thus hoping to teach the doctrines of Christianity more effectively.²⁶

The indigenous world the friars entered was a complex one. Indeed, it was still, to a large extent, an indigenous world. Spaniards maintained control of only a relatively small area, and in the towns of the Valley of Mexico, pre-conquest organizations remained quite powerful, influencing if not transforming the colonial structures Spaniards worked to establish. Numerous indigenous political groups divided the landscape as they had for centuries. The Aztec confederation, under the authority of the Mexica, were merely the most recent manifestation of this phenomenon.²⁷ Not surprisingly, indigenous languages were

²⁴ Little has been written about the earliest colonization efforts of the Spanish in the Caribbean. One starting place is Lynne Guitar, “Cultural Genesis: Relationships among Indians, Africans, and Spaniards in Rural Hispaniola, First Half of the Sixteenth Century” (unpublished Ph.D. thesis, Vanderbilt University, 1998).

²⁵ John Leddy Phelan, *The Millennial Kingdom of the Franciscans in the New World*, 2nd ed. (Berkeley, 1970).

²⁶ See Charles Gibson *The Aztecs under Spanish Rule* (Stanford, 1962).

²⁷ The Mexica were the most recent group to migrate to central Mexico. They, like most of the groups or tribes around them, spoke Nahuatl, and many scholars speak

the primary means of communication. The mendicant friars turned their attention to several of these languages, learning them with the intention of catechizing newly converted Indians. Indigenous people, too, made use of a number of indigenous languages to record local events and local administration of towns. Rich, and largely untapped, archival resources exist in many of these languages. By far the best studied of these languages is Nahuatl, and it is in the Nahuatl documents left by the friars and the Indians that we can begin to glimpse the challenges of teaching theological concepts such as penance in a wholly new environment.

In her outstanding book, *The Slippery Earth*, Louise Burkhart details the theological-linguistic challenge of teaching Christianity in Nahuatl, a challenge only partly understood by the participants themselves.²⁸ Not surprisingly, the friars were particularly interested in teaching the concept of sin, with the aim of changing behaviour, rather than focusing on more abstract metaphysical or theological concepts. But following religious trends in western Europe, an interest in proper practices was linked to concern about the intentions that underlay those acts. Penance, therefore, was an important element of early missionizing efforts. As would be repeated in other, later missionary fields, the mendicant friars in Mexico took heart in acts that appeared to mimic idealized or penitential Christian practices, such as fasting, abstinence, or self-mortification. The goal of the friars was to encourage these practices and bring them into the service of Christian devotion, and recent research by Osvaldo Pardo has focused on the creative negotiations inherent in the process of establishing sacramental rites among the Nahua.²⁹

Yet the friars' efforts were hampered both by the meanings inherent in the vocabulary and linguistic categories of Nahuatl and by the rhetorical strategies favoured in Nahuatl (which the friars consciously strove to emulate). Perhaps the most difficult word for the friars to translate

of these groups collectively as the Nahua (that is, Nahuatl speakers), since they were linguistically and culturally quite similar to one another. The Aztec confederation was the military/institutional organization that the Mexica used to subdue the Valley of Mexico in the century before the arrival of the Spanish. I will generally use the word *Nahua* or, when talking about indigenous peoples in central Mexico or the Americas generally, *Indian*.

²⁸ Louise M. Burkhart, *The Slippery Earth: Nahua-Christian Moral Dialogue in Sixteenth-Century Mexico* (Tucson, 1989).

²⁹ Osvaldo Pardo, *The Origins of Mexican Catholicism: Nahua Rituals and Christian Sacraments in Sixteenth-Century Mexico* (Ann Arbor, 2004).

was *sin*. They chose the Nahuatl word *tlatlacolli*, which literally means “something damaged.” According to Burkhart, “any error or misdeed could be labelled a *tlatlacolli*, from conscious moral transgressions to judicially defined crimes to accidental or unintentional damage.”³⁰ Even hail damaging crops was subsumed under this term. This implies that for Nahua, effects—the damage—were more important than their cause, and damage that disrupted order, or in some other way created chaos or discontinuity, was particularly significant. The friars were further impeded in expressing Christian theology by the fact that there is no abstract Nahuatl word for “evil.” Nahua did not see the world in absolute terms, nor divided into good and evil; rather, the world existed in a balance of order and chaos. In the first generations of missionizing in the Valley of Mexico, therefore, when friars thought they were discussing sin, Nahua probably understood sin to be not a source of human guilt but, rather, a part of the order of the universe. Sermons explaining good and bad in terms of order and chaos were understood in relative, rather than absolute, terms.

The mendicants employed some of the rhetorical techniques of skilled Nahuatl speakers to make their own speeches more persuasive, and to an extent they were successful. But once again, cultural and religious resonances altered the thrust of the friars’ sermons and catechisms, even when Nahuatl meanings seemed transparent. One of the most successful metaphors employed by the friars, for example, was that comparing purity and impurity with cleanliness and filth.³¹ This was a common trope in contemporary Nahuatl, and one with clear Christian parallels. Yet the Nahuatl supernatural presences associated with filth—who, like Satan, could cause immoral activity and punish those who engaged in it—also had the power to remove impurity, quite unlike the devil.³² Unlike Christian concepts, the idea fairly translated as “impurity,” *tlazolli*, also implies items that are old, worn out, disordered, deteriorated, or out of place. This impurity or pollution was powerful and, unlike the Christian concept of impurity, contagious.

In other words, for Nahua, corruption/filth/disorderliness *was* the sin itself, whereas for Christians, corruption was the cause or effect of sin. Often this nuance was not significant; both Nahua and Christians saw

³⁰ Burkhart, *The Slippery Earth*, p. 28.

³¹ Burkhart, *The Slippery Earth*, ch. 4.

³² Burkhart, *The Slippery Earth*, p. 92.

sexual excess, for example, as sinful or *tlazolli*. But in other cases, including confession and penance, the implications could be important. Nahua saw continuity between soul and body, and Nahua rituals designed to remove moral impurity relied on this close relationship.³³ Indigenous people in urban areas, where the influence of the friars was strongest, appear to have adopted the Christian rites of baptism and confession relatively easily, but on their own terms. (This was not necessarily the case farther away from Mexico City, where mendicants were less active, or where there was more active political resistance.) Nahua went to Christian confession filthy, wearing dirty clothes. "After the rite they wash all over very well and say that with the dirtiness they remove the sins. They go home clean, and, if they have clean clothes, they put them on."³⁴ While Christians saw cleanliness as metaphorical, at least some Nahua seem to have understood that to partake of communion one must be ritually pure, an idea that did not distinguish between the physical and the spiritual. Not surprisingly, there are indications that Nahua wore clean clothes to communion, as well as home from confession. In short, while the friars were keen to teach concepts of sin and penance, and were in the long run successful, the initial reception of those ideas may have carried connotations with which the friars were not immediately concerned.

The optimism and millenarianism that marked particularly early Franciscan enterprises faded within a generation, and in any event made a less significant mark on the historiography of the Andes. Friars continued to learn indigenous languages, which, though, for the Andes meant Quechua primarily and Aymara secondarily.³⁵ And they continued to try to teach the central prayers and concepts of Christianity, including the importance of penance and confession. As in Mexico, missionaries were unevenly distributed across the territory, and efforts were focused on urban centres. Also as in Mexico, missionaries tried to build upon indigenous ideas as a kind of "pre-Christianity." Early students of Andean religious practices—the friars who hoped to convert local residents—searched for evidence of monotheism, with some sense of

³³ Burkhart, *The Slippery Earth*, pp. 98–101.

³⁴ Burkhart, *The Slippery Earth*, p. 109.

³⁵ On the history of the former, see Bruce Mannheim, *The Language of the Inka since the European Invasion* (Austin, 1991). Mannheim argues that Spaniards, conditioned to consider "language the companion of empire," in the words of Spanish humanist Alonso de Nebrija, actually (and somewhat unconsciously) promoted and regularized Quechua because they expected it to conform to their understanding of an "imperial" language.

success, and then used their interpretation of Andean religious practices in their attempts to win converts to Christianity. And in Quechua, too, friars searched for indigenous terms to translate words such as *baptism* and *confession*.³⁶ It is not surprising, then, that just like in Mexico, the subjects of this missionary activity heard the friars' message in the context of their own understanding of the cosmos. Much of the conquest and the imposition of Christianity was interpreted as an instance of *pachacuti*, or a radical reversal of the established order. Iconographic representations of *pachacuti* made their way into colonial Christian art, so that such images may well have held additional resonances not apparent to Spanish immigrants and their descendants.³⁷ Over time, frustration with apparent indigenous resistance to conversion led the friars to emphasize coercive means of conversion and to introduce Spanish words for specific theological concepts, believing that the use of indigenous terms was not aiding missionary activity.³⁸

Resistance to missionary efforts in the Andes was fundamentally intertwined with the ongoing, sometimes violent resistance to Spanish authority. An Inca ruler named Manco Capac, installed by Pizarro himself after the Spanish had executed the Inca Atahualpa, had quickly turned against Pizarro and initiated a rebellion against the Spanish. Although the Inca troops had been unsuccessful in their initial military attack upon the Spanish, Manco Capac and his supporters and descendants maintained a rival government in the mountains until his descendant, Inca Tupac Amaru, was captured and beheaded in 1572. Meanwhile, ongoing local, small-scale resistance to Spanish religious and political authority expanded into a broader movement in 1560 with the revolt of Taqui Onqoy. Indigenous leaders encouraged Andeans to summarily reject Spanish religious traditions, as well as Spanish food, dress, and other modes of living. Ultimately, it would take Spanish religious and civil leaders decades to repress the movement.³⁹

³⁶ Sabine MacCormack, "'The Heart Has its Reasons': Predicaments of Missionary Christianity in Early Colonial Peru," *Hispanic American Historical Review* 65/3 (1985), 443–66.

³⁷ Sabine MacCormack, "*Pachacuti*: Miracles, Punishments, and Last Judgment: Visionary Past and Prophetic Future in Early Colonial Peru," *American Historical Review* 93/4 (October 1988), 960–1006.

³⁸ MacCormack, "The Heart Has its Reasons," p. 456. See also Karen Spaulding, *Huachirí: An Andean Society under Inca and Spanish Rule* (Stanford, 1984).

³⁹ Steve Stern, *Peru's Indian Peoples and the Challenge of Spanish Conquest: Huamanga to 1640* (Madison, 1982).

Given the open hostility that Spaniards faced in the Andes, it should not be surprising that Christian devotional practices may not have had as sympathetic a reception among the conquered population here as in the Valley of Mexico—and that historians have therefore emphasized indigenous resistance to Christian ritual practices. Andeans, like Nahua, had an indigenous concept of fasting and confessing, and many Andeans apparently continued to confess to local “sorcerers” (as the Spanish called them). They also fasted according to Andean precepts: refraining from eating salt or chili peppers and refraining from sexual activity.⁴⁰ In more urbanized areas, and areas more influenced by the Spanish, more Andeans accepted, or at least accommodated themselves to, Christian religious practices. Clearly some Andeans participated in Christian rites of confession and penance, since the Andean author Guaman Poma de Ayala complained in his *Nueva crónica y buen gobierno* of the treatment of penitents by Spanish priests in the early 17th century.⁴¹ But fidelity to old ways continued, and Christianity coexisted with other, indigenous Andean practices into the 18th century and beyond.⁴²

In China, as in the Andes, the strength of the relationship that Christian religious authorities had with local political authorities profoundly affected the success of Christian missionizing. In China, however, the challenge for Catholic missionaries was not one of being linked to a deeply resented colonial power but, rather, how best to accommodate themselves to a powerful, well-established native regime that was the political and cultural equal of any in Europe. The Jesuits were the first to tackle this challenge.⁴³

The Society of Jesus, organized by Ignatius of Loyola and officially established by papal bull in 1540, took as its mission ministering to those in spiritual need, those who sought a conversion of the heart, whether it was by founding houses for former prostitutes in Rome or striking out on missionary voyages to North and South America and Asia. Jerónimo Nadal said that ministry in “the Indies” and in Germany were the “two wings” of the Society of Jesus; and indeed the

⁴⁰ MacCormack, “The Heart Has its Reasons,” p. 460 n. 58.

⁴¹ Sabine MacCormack, *Religion in the Andes: Vision and Imagination in Colonial Peru* (Princeton, 1989), p. 253, fig. 27. See also the definitive edition, Guaman Poma de Ayala, *Nueva Crónica y buen gobierno* (1615), ed. John V. Murra, Rolena Adorno, and J. Urioste (Madrid, 1987).

⁴² See Kenneth Mills, *Idolatry and its Enemies: Colonial Andean Religion and Extirpation, 1640–1750* (Princeton, 1997).

⁴³ See Liam Matthew Brockey, *Journey to the East: The Jesuit Mission to China, 1579–1724* (Cambridge, Mass., 2007) for an excellent recent study of this topic.

Jesuits were active in both fields, becoming imaginative missionaries in the Americas and Asia as well as in Protestant Europe.⁴⁴ Soon they challenged the mendicants in South America for control over the religious education of the indigenous populations, earning the resentment of the Franciscans, Dominicans, and Augustinians who had preceded the Jesuits in New Spain and Peru. By the 17th century, the Society of Jesus had also begun some missionary excursions into New France in North America. Their moderate success in teaching penitential and confessional practices in New France is perhaps best exemplified by Catherine Tekakwitha, a young Iroquois convert in late 17th-century New France who was known for her penitential practices and self-mortification.⁴⁵

But perhaps the most striking early Jesuit work took place in Asia. As early as 1541, Francis Xavier sailed to Asia and successfully preached in India and the Molucca Islands. Soon he hoped to travel to the mainland to preach there as well. While Xavier died just off the Chinese coast in 1551, while awaiting passage to China, his desire did not pass away with him. Jesuits and other missionaries entered Japan, and in 1582 the Society of Jesus finally set foot in China.⁴⁶ The Jesuits continued their work in China, Japan, India, and the Spanish and Portuguese islands for centuries. As John O'Malley makes clear in his masterful study, the Jesuits referred back to Ignatius's *Spiritual Exercises* as a model for developing lay spirituality, and the *Exercises* encouraged deep contemplation and penitential practices for the laity.⁴⁷ Matteo Ricci and his lesser-known Jesuit colleagues in China ministered primarily to the elite and literati, striving through them to influence the greater mass of the population. In the process, the Jesuits recognized the need to "accommodate"—to use Ricci's term—indigenous practices that they understood not to be antithetical to Christianity, most notably the so-called "rites controversy."⁴⁸ Briefly, Christian missionaries in China struggled with whether to permit converts to continue practicing

⁴⁴ John W. O'Malley, *The First Jesuits* (Cambridge, Mass., 1993), p. 70.

⁴⁵ See Allan Greer, "Iroquois Virgin: The Story of Catherine Tekakwitha in New France and New Spain," in *Colonial Saints: Discovering the Holy in the Americas, 1500–1800*, ed. Allan Greer and Jodi Bilinkoff (London, 2003).

⁴⁶ M. Howard Rienstra, ed. and trans., *Jesuit Letters from China, 1583–84* (Minneapolis, 1986), pp. 3–4.

⁴⁷ O'Malley, *The First Jesuits*, pp. 37–50. See also Ignatius of Loyola, *The Spiritual Exercises of Saint Ignatius* (New York, 1964).

⁴⁸ George Minamiki, *The Chinese Rites Controversy: From Its Beginning to Modern Times* (Chicago, 1985).

traditional ancestor rites. Rites honouring one's ancestors had a religious significance, but not an exclusively religious one. The Catholic Church eventually ruled against permitting converts to observe ancestor cults, but not before the Society of Jesus had argued for permitting ancestor rites on the principle of accommodation. At the same time, Ricci in particular strove to impress the educated elite in China, not by teaching Christian doctrine but by setting the ground for acceptance of Christianity through emphasizing Western skills, including mathematics and the mnemonic "memory palaces."⁴⁹

The activity of other groups of missionaries in China, however, presents a different view. Franciscan missionaries, for example, were also quite active in China. Instead of competing with the Jesuits for elite converts, though, the Franciscans turned their attention to, among others, the lower classes. As David Mungello has noted in his path-breaking work on missionary activity in Shandong, the Franciscans did indeed have many converts, and established lay devotional practices and lay organizations, like confraternities, among their catechumens. One of these confraternities, the Confraternity of the Passion of Christ, meditated on Jesus' sufferings during the Crucifixion and, in connection with that, encouraged fasting and self-flagellation. These devotional practices, Mungello notes, paralleled ascetic disciplinary practices common to Daoism and Chinese Buddhism during this period.⁵⁰ Understandings of those practices almost certainly must have varied widely, and it is unclear how converts interpreted what they were doing, but in this case, at least, missionary activity paralleled the experience of others in other parts of the world.

As Catholic missionaries spread throughout the early modern world, then, the ideas of penance that they brought with them seemed to find a receptive audience. Some friars were encouraged by the local traditions that appeared to mirror the penitential ideas the friars tried to instil. Yet, whether in the Americas or Asia, the local traditions that the friars built upon often encouraged the perpetuation of modes of thought that were unrelated, and sometimes fundamentally opposed, to the Christian theology that the mendicants and Jesuits yearned to

⁴⁹ Jonathan Spence, *The Memory Palace of Matteo Ricci* (New York and London, 1984).

⁵⁰ David E. Mungello, *The Spirit and the Flesh in Shandong, 1650–1785* (Lanham, Md., 2001), pp. 79–81. My thanks to Prof. Kristin Stapleton and Prof. Mungello for their assistance.

teach. In northern Europe, the opposite problem emerged, as emerging Protestant communities attempted to alter existing modes of thought that supported and encouraged penitential practices.

Penance in the Protestant World

New converts in Asia and the Americas may have re-conceived of penance and its role in their lives and salvation, but Protestants increasingly rejected significant elements of the traditional western Christian notions of sin, penance, and reconciliation. Nearly all Protestant churches opposed the notion of penance per se as an element of “good works” antithetical to the Protestant notion of salvation by grace. Yet Protestant thinkers and laypersons often chose not to eliminate confession and absolution from their worship entirely. Over time, most evangelical groups emphasized the social stability and communal harmony represented by confession and absolution and utilized these rites, in their Protestant forms, in the process of re-establishing social harmony in local communities.

When Martin Luther promulgated the doctrine that God’s salvation was not earned by good works but, rather, was an unmerited expression of grace, the implications for penance, confession, and absolution were vast. Emphasis shifted from confession, which might be considered a “good work,” to God’s absolution as a sign of his grace. Disagreement emerged as to whether confession was a sacrament or not. Private confession became voluntary, although Luther—himself no stranger to the desire for consolation before the judgement of God—considered private confession and particularly absolution, when properly emphasized, to be a comfort to the penitent. Indeed, private confession continued in the Lutheran church until the 17th century, and some Lutheran preachers understood private confession to be a useful setting for preaching the gospel.⁵¹ Lay opinions of penance seem not always to have mirrored reformers’ attitudes, though, and sermon collections imply that the laity

⁵¹ See Mary Jane Haemig, “Communication, Consolation, and Discipline: Two early Lutheran preachers on confession,” in Thayer and Lualdi, *Penitence in the Age of Reformations*, pp. 30–48; and Ronald Rittgers, “Private Confession and Religious Authority in Reformation Nürnberg,” in Thayer and Lualdi, *Penitence in the Age of Reformations*, pp. 48–70. See also Rittgers, *Reformation of the Keys*.

were often reluctant to confess.⁵² In any event, penitential practices as good works were discouraged.

In smaller towns, penance remained an essential part of the Lord's Supper, linking public consumption of the Eucharist with community health and well-being. David Sabean has demonstrated that in villages in the duchy of Württemberg, monthly consumption of communion was an expression of obedience to the decisions of secular authorities, and a sign of being at peace with the rest of the community. Those not prepared in their hearts for communion, whether because they felt resentment toward the actions of local officials or because they were in the midst of a feud with a neighbour, often absented themselves from the Lord's Supper out of fear that an ill-prepared heart could make taking communion dangerous or even life-threatening. Yet their absence also endangered the community by putting in doubt their collective salvation. Penance, confession, and reconciliation, therefore, became an important means for lay people to challenge local political and social conditions and to insist on a re-evaluation of village disagreements.⁵³

In Calvinist communities, too, re-conceptualized notions of penance and contrition were closely linked to celebration of the Lord's Supper and the harmony of the community. Confession was unequivocally rejected as a sacrament, and there was no place for traditional auricular confession, although Calvinists were encouraged to counsel and console one another, and ministers in particular were responsible for this work. Calvinists were aided in this by the office of the Consistory—an oversight body established by Calvin in the Ecclesiastical Ordinances of Geneva and adopted elsewhere that had the power to investigate and punish misdeeds of residents. Like Catholic Europe, then, Calvinists in Geneva, France, and the Low Countries pursued sinners for the purpose of punishing and reforming those who sinned, but in Calvinist cities the focus quickly turned toward public rather than private sins. In France, sins that disrupted the social order and public peace—dancing, gambling, insults, and brawls, for example—were brought before the Consistory much more frequently than sexual faults.⁵⁴ And just as the Consistory sought out public sins, so too it insisted upon a public

⁵² Haemig, "Communication, Consolation, and Discipline," p. 43.

⁵³ David Sabean, *Power in the Blood. Popular Culture and Village Discourse in Early Modern Germany* (Cambridge, 1984).

⁵⁴ Raymond A. Mentzer, "Notions of Sin and Penitence within the French Reformed Community," in Thayer and Lualdi, *Penitence in the Age of Reformations*, pp. 84–100.

expression of contrition and remorse as penance and reconciliation for those sins. The Lord's Supper was the site for this reconciliation and for excommunication when required by the Consistory, for, in parallel to David Sabean's analysis of Lutheran Germany, Communion was at its centre an act of a (in this case Calvinist) community.⁵⁵ For Calvinists, as for Sabean's Lutherans, reconciling with one's neighbours was an essential prerequisite to the four annual commemorations of the Lord's Supper. As in other religious communities, both Catholic and Protestant, there was some lay reluctance to participate in this system of penitential discipline. And critics of the Consistory wondered about the extent to which public censure was scripturally authorized. But as in other Catholic and Protestant communities, anxiety about moral reform remained, and it remained linked to consumption of communion.

In England, the relationship between penance, confession, and communion was slowly altered by successive waves of reform, overseen by Henry VIII, Edward VI, Mary I, and Elizabeth I over the course of the 16th century. As in other Protestant communities, the sacramental nature of confession was rejected, and Anglican priests did not have sacramental power to absolve sins. At the same time, communion rites were reworked in accord with shifting, usually more Protestant, demands. In *The Voices of Morebath*, Eamon Duffy relates how in this reluctantly reformed village the altar was removed and replaced by a simple table, placed to one side; a simple communion cup replaced the chalice; and a pulpit for preaching was erected.⁵⁶ Some of this had been prefigured by earlier Lollard preaching.⁵⁷ But as elsewhere, anxiety about sinful behaviour persisted. In response, some clergy, most notably Richard Greenham, encouraged people to seek Godly counsel from a minister or godly lay person. Greenham provided a model of the pastor as a spiritual guide who led those suffering from physical ills or spiritual anguish to pray, sing, and meditate in order to gain consolation. His wildly successful ministry drew people from throughout the country, and although the idea of spiritual counsel from priests or lay

⁵⁵ Charles H. Parker, "Rituals of Reconciliation: admonition, confession and community in the Dutch Reformed Church," in Thayer and Lualdi, *Penitence in the Age of Reformations*, pp. 101–15.

⁵⁶ Eamon Duffy, *The Voices of Morebath. Reformation and Rebellion in an English Village* (New Haven, 2001), pp. 144, 172, 178–80.

⁵⁷ See, for example, Anne Hudson, *The Premature Reformation: Wycliffite Texts and Lollard History* (Oxford and New York, 1988).

people remained controversial, Greenham's "spiritual physicke" was deeply influential.⁵⁸

Although it is difficult to generalize about a movement as diverse as the Anabaptists, we can safely say that formal confession and penance were not central to Anabaptist practices. Because they had rejected the sacrament of confession and the doctrine of transubstantiation, private penance and auricular confession no longer had a clear place or purpose for Anabaptists and quietly disappeared. Similar to the practices of some other Protestant denominations, Anabaptists disciplined straying fellow members by exercising a ban on their participation in the Lord's Supper. The Schleithem confession of faith (1527) specified that this be done before Communion, so that the communal event could be a genuine gathering of those of one spirit. As in other Protestant communities, therefore, Communion remained at the centre of collective devotion and remained a means of affirming the proper practice of the community of believers, even if, in this case, the harmony and reconciliation represented by communion was completely stripped of its penitential preconditions.⁵⁹

Conclusion

Lay ideas about penance were never uniform. An undercurrent of hostility toward the concept of penance and confession predated the early modern period and extended beyond it, while in many other cases devotion to penitential practices was on the rise. Regardless of how individuals understood penance, however, the corpus of beliefs and practices identified as penitential were ubiquitous across western Europe in the early modern period. Whether one was Catholic or Protestant, reluctantly converted or a life-long Christian, devoted to one's church or deeply opposed to it, lay perceptions of penance continued to inform lay decisions and acts throughout this period. Given the compelling nature of penitential logic to so many early modern Europeans, then,

⁵⁸ Kenneth L. Parker, "Richard Greenham's 'spiritual physicke': The comfort of afflicted consciences in Elizabethan pastoral care," in Thayer and Lualdi, *Penitence in the Age of Reformation*, pp. 70–83.

⁵⁹ Walter Klaassen, ed. *Anabaptism in Outline. Selected Primary Sources* (Kitchener, 1981); Claus-Peter Clasen, *Anabaptism: A Social History, 1525–1618: Switzerland, Austria, Moravia, South and Central Germany* (Ithaca, N.Y., 1972).

it is not surprising that a shared experience of penance and reconciliation was often key to collective action and communal identity. For Catholics, and to a somewhat lesser extent Protestants, penance was an important element of individual salvation and collective harmony. Indeed, the logic of penance not only resonated with demands for social harmony but was also malleable enough to bend to political interests. This should imply, rightly, that penitential practices were flexible enough to adapt to shifting lay demands as Catholicism spread penitential doctrines across the globe. Some sites adopted Catholic penitential notions more readily than others, and in all cases cultural differences led to further shifts both in penitential practices and how they were understood. Indeed, it was shifting lay demands and interests—both in Europe and across the world—that largely shaped lay penitential piety in the early modern period.

CONFESSORS AS HAGIOGRAPHERS IN EARLY MODERN CATHOLIC CULTURE*

Jodi Bilinkoff

In a brief but influential essay, Peter Burke examined the 50 or so cases of men and women formally canonized as saints in the period following the Council of Trent. Burke asked, “What kind of person had the best chance, during the Counter-Reformation, of achieving this particular form of upward mobility?”¹ He identified certain key factors, such as sex, class, national origin, and affiliation with a particular religious order. Burke ended his essay by calling for “further study” of the “process of negotiation” between ordinary Christians and elites by which certain individuals came to be certified as possessing heroic virtues and deserving of veneration by the culture at large.²

In this essay I take up Burke’s call but will change the focus of inquiry from saints to saint-makers.³ This volume investigates the manifold

* This essay is a slightly abridged version of ch. 2 of my book *Related Lives: Confessors and Their Female Penitents, 1450–1750* (Ithaca, N.Y., 2005).

¹ Peter Burke, “How To Be a Counter-Reformation Saint,” in *Religion and Society in Early Modern Europe*, ed. Kaspar von Greyerz (London, 1984), pp. 45–55, at 49.

² *Ibid.*, p. 53. There is an extensive literature on sainthood, particularly for the pre-1500 period. Frequently cited general studies include: Peter Brown, *The Cult of the Saints: Its Rise and Function in Latin Christianity* (Chicago, 1981); André Vauchez, *Sainthood in the Later Middle Ages*, trans. Jean Birrell (1988; Cambridge, 1997); Donald Weinstein and Rudolph M. Bell, *Saints and Society: The Two Worlds of Western Christendom, 1000–1700* (Chicago, 1982); Richard Kieckhefer, *Unquiet Souls: Fourteenth-Century Saints and Their Religious Milieu* (Chicago, 1984); Caroline Walker Bynum, *Holy Feast and Holy Fast: The Religious Significance of Food to Medieval Women* (Berkeley, 1987); and Aviad Kleinberg, *Prophets in Their Own Country: Living Saints and the Making of Sainthood in the Later Middle Ages* (Chicago, 1992). For the post-1500 period, see Gabriella Zarri, “Living Saints: A Typology of Female Sanctity in the Early Sixteenth Century,” in *Women and Religion in Medieval and Early Modern Italy*, ed. Daniel Bornstein and Roberto Rusconi (Chicago, 1996; orig. essay 1980), pp. 219–303; and Kenneth L. Woodward, *Making Saints: How the Catholic Church Determines Who Becomes a Saint, Who Doesn’t, and Why* (New York, 1990). There are numerous studies of individual figures and geographical locations.

³ I am using the term *saints* here to mean anyone regarded as saintly or exemplary in their own times, not just those who were officially canonized. Burke recognizes this broader conceptualization as well, referring to “informally chosen holy people,” “unofficial saints,” and “local cults.” (“How To Be a Counter-Reformation Saint,” pp. 45, 47–48).

interactions between confessors and their penitents. In early modern Catholic Europe and its colonies, priests frequently maintained close relationships with penitents, especially female penitents, whom they regarded as spiritually gifted. Many confessors felt further compelled to record the lives of these exemplary penitents and to publish or circulate them after the women had died. What inspired priests to become hagiographers? And, once they had made this literary, as well as pastoral decision, how did they go about the process of documenting the lives of their saintly penitents? In examining the extensive hagiographical literature of the early modern period, one can often catch a glimpse of the hagiographer at work, and gauge something of his objectives, his techniques, and his sense of vocation as an author.

From Confessor to Author

In 1609, the Jesuit Vincenzo Puccini published the life of his penitent and fellow Florentine Maria Maddalena de'Pazzi, two years after the death of the Carmelite nun. Puccini began his book with a statement of conviction and purpose. "The Eternal God always showed and does continually show himself wonderful in his Saints...that in every age some may be found..." As "in these days of ours he has appeared wonderful in Suor Maria Maddalena," Puccini declared, "I will therefore describe her life and death...in a plain manner, to the end that...everyone might (by looking into that glass of Goodness) be inflamed with the heavenly fire which was ever burning and feeding upon her purest heart."⁴

For other studies that have treated hagiographers as a group, see Thomas Heffernan, *Sacred Biography: Saints and their Biographers in the Middle Ages* (New York, 1988); José Luis Sánchez Lora, *Mujeres, conventos y formas de la religiosidad barroca* (Madrid, 1988); *Gendered Voices: Medieval Saints and Their Interpreters*, ed. Catherine M. Mooney (Philadelphia, 1999); Alison Knowles Frazier, *Possible Lives: Authors and Saints in Renaissance Italy* (New York, 2005); and John W. Coakley, *Women, Men, and Spiritual Power: Female Saints and Their Male Collaborators* (New York, 2006).

⁴ *Il sommo Dio si è sempre mostratò, e si vâ mostrando maraviglioso ne' suoi santi; acciochè in ogni secolo si truovi...à nostri tempi à apparito mirabile in Suor Maria Maddalena...semplicemente si descrivera la vita e la morte sua, assinchè, si come ella disiderò, tutti possano, in quello specchio di bontà rimarando, infiammarsi di que el celeste fuoco, che del continuo abbruciò il suo purissimo cuore*; Vincenzio Puccini, *Vita della veneranda Madre Suor Maria Maddalena de'Pazzi Fiorentina* (Florence, 1611), p. 1. I use here the English translation of 1619: *The Life of the Holy and Venerable Mother Suor Maria Maddalena de Patsi*... (Colognc?, 1619), p. 2. This is a facsimile edition in vol. 33 of the series *English Recusant Literature, 1558–1640*, ed. D. M. Rogers (Menston, UK, 1970).

For Puccini, the primary motivation for writing was apostolic: to edify believers and provide them with models of pious behaviour. This had been, after all, the goal of moralists and preachers since the beginning of the Christian era. Printed books, available since the late 15th century, were highly effective as supplements to sermons, the traditional medium for admonishing, teaching, and consoling the faithful. Juan Esteban Noriega, who had guided María Quintana, a *beata* from Segovia, adopted a pastoral tone as he informed readers of his motives for “bringing this *Life* before the public” in 1737. He wanted to broadcast María’s story of sin, repentance, and redemption for the benefit of despairing sinners, “...so that no one lose confidence in [God’s] mercy, no matter how numerous, grave and heinous his own afflictions may be.”⁵ Often the same clerics who published the lives of exemplary penitents also extolled their virtues in sermons.⁶

Puccini’s insistence upon the universality and efficacy of saints took on an extra edge in an age in which Protestants rejected this devotion. The effort to use exemplary lives to reaffirm the cult of the saints and other aspects of Catholic doctrine may have been especially intense in France, with its significant Huguenot minority. In the introduction to his biography of his penitent, Barbe Acarie, the founder of the Discalced Carmelite order in France (d. 1618), André Duval spoke of the fruits to be gained from reading the lives of saintly persons. “It would seem,” he stated, “that France has more interest in [this type of reading matter] than the rest of Christendom, because in so many places there are great numbers of heretics.” Duval expressed hope that after hearing about this Servant of God, honoured by so many miraculous graces in a way that none of their fellows had been, “some among [the heretics] will be able to place themselves under the teachings of the Church...”⁷

⁵ *para que ninguno desconfie de su Misericordia, por muchas, gravísimas y feás que sean sus culpas*; quoted in María-Helena Sánchez Ortega, *Confesión y trayectoria femenina: Vida de la Venerable Quintana* (Madrid, 1996), p. 211.

⁶ To cite just a few examples: *Tesoro del Carmelo escondido... Vida... de la Venerable Madre Isabel de Jesús...* [hereafter *Tesoro escondido*] (Madrid, 1685), concludes with a collection of the sermons in Isabel’s honour given by the book’s compiler, Manuel de Paredes, as well as other clerics. This is available on microfiche: *Escritoras españolas: 1500–1900* (Madrid, 1991–92), libro 22. Marcos Torres included a letter from the Bishop of Málaga, thanking him for delivering the sermon at the funeral of María de Pol; Marcos Torres, *[N]oticias... de la vida y virtudes... de Doña María de Pol, su madre* (Málaga?, 1660) n.p.

⁷ *Et semble que la France a plus d’intérêt en cela que le reste de la Chrestienté, pource qu’estant en plusieurs lieux pleine d’un grand nombre d’heretiques, il est à presumer que par le lecture de cette vie ils demeureront confus, ne voyant aucun de mesme parmy soy honoré de grands miracles, comme*

Sometimes confessor-hagiographers targeted particular segments of the population for their moralizing messages. Pedro de Ribadeneyra singled out upper-class women in Toledo, his hometown and that of his subject, the pious laywoman Doña Estefanía Manrique de Castilla (d. 1606). The Jesuit explained that he had decided to write her life in order to “arouse by her example those *señoras* who are entranced by the baubles and unedifying things of this life.”⁸ Only five years after Doña Estefanía’s death, Isabel de Sosa was born in the same Castilian city. This Carmelite tertiary and visionary, known in religion as Isabel de Jesús, died in 1682. Three years later, when her confessor Manuel de Paredes published Isabel’s spiritual autobiography, along with his own reminiscences and glosses, “for the instruction of the faithful,” he also made references to certain “devout and well-known women” in Toledo.⁹

Confessors were thus eager to publicize the pious lives and divinely endowed gifts of their spiritual daughters and offer them as models for emulation. Few failed, however, to highlight their own roles in bringing to the attention of the public previously unknown figures. This was especially true in the case of cloistered nuns. Maria Maddalena de’Pazzi, because she “remain[ed] shut up in a Monastery, they were few who saw the wonderful things which our Lord wrought in her,” Vincenzo Puccini lamented. This regrettable state of affairs had now, of course, been rectified, thanks to his biographical efforts.¹⁰ Manuel de Paredes built his entire exposition of the life of Isabel de Jesús around the metaphor of a “hidden treasure” (*tesoro escondido*) at last “brought to light” by the holy woman’s trusted confessor and confidant.¹¹ In

a esté celle de que nous escriuons; de sorte que peut-estre quelques uns d’entre eux pourront se ranger sous les enseignes de l’Eglise . . .; André Duval, *La Vie admirable de la Bienheureuse Soeur Marie de l’Incarnation . . . appelée dans le monde Mademoiselle Acarie* (1621; Paris, 1893), p. xxii.

⁸ *despertar con su exemplo a las Señoras, que estan entretenidas con los regalos y baxezas de esta vida*; Pedro de Ribadeneyra, *Vida de Doña Estefanía Manrique de Castilla* (c.1606), MS Madrid, Biblioteca Nacional 7421, 2v. See also Jodi Bilinkoff, “The Many ‘Lives’ of Pedro de Ribadeneyra,” *Renaissance Quarterly* 52 (1999), 185–89. In a similar vein, Alonso de Rojas, lauding the ascetic Mariana de Jesús, exhorted “Learn, girls of Quito, from your fellow countrywoman, [to prefer] holiness over beauty, virtues over ostentation”; quoted in Ronald J. Morgan, “‘Just like Rosa’: History and Metaphor in the *Life* of a Seventeenth-Century Peruvian Saint,” *Biography* 21 (1998), 283.

⁹ *Tesoro escondido*, p. 742.

¹⁰ Puccini, *Vita della Veneranda Madre Suor M. Maddalena de’Pazzi Fiorentina*, p. 2.

¹¹ *Tesoro escondido*, for example, throughout the unpaginated prologue, and pp. 741–43, 745. For further discussion of this imagery, see Sherry M. Velasco, *Demons, Nausea, and Resistance in the Autobiography of Isabel de Jesús (1611–1682)* (Albuquerque, 1996), pp.

1677, the French Benedictine Claude Martin published the spiritual autobiography, with extensive commentary, of the Ursuline Marie de l'Incarnation, who also happened to be Martin's mother. He introduced his exemplary subject to readers in a way that underscored his contribution as well as hers, insisting that "the *Life* of this excellent nun that I give to the public is rare and extraordinary."¹²

This last case shows how hagiographers often had their own, personal reasons for relating lives. Other clerical authors expressed the filial obligation to celebrate family members or mentors. Composing the biography of a person who had played a significant role in his own life allowed a priest to repay a debt of gratitude while at the same time constructing an exemplary role model for public consumption.

Sons who grew up to be the "spiritual fathers" of their biological mothers acknowledged that this unique relationship contributed to their impulse to write the lives of these widowed Servants of God. The Jesuit Marcos Torres, son of the hyper-pious and charitable Doña María de Pol (d. 1659), recognized that some people would greet his hagiographical account with scepticism, as when "biased parents praise their child." He likened the situation to someone who keeps his treasure hidden under his bed but, he assured his readers, "my priestly status (*sacerdocio*) is the key that unlocks it." Moreover, Torres had been ordered to compose this account. The Bishop of Málaga charged him to write in order to "satisfy the obligation of your blood," reminding him that as both María's son and confessor "you have more intimate knowledge [of the subject] than anyone else."¹³ Juan Bernique shared

26–28. This metaphor of "bringing to light" previously unknown lives was utilized frequently by hagiographers.

¹² *Car la Vie de cette excellente Religieuse que je donne au public est rare et extraordinaire...*; *La Vie de la Venerable Mere Marie de l'Incarnation...* (Paris, 1677), pp. i–ii. In like manner, the Jesuit Paul Ragueneau explained to the dedicatee of his 1671 *Life* of Catherine de Saint Augustin that "this work that I present to you contains something that is as extraordinary as it is little known to the people of this world" [*L'Ouvrage que je vous presente a quelque chose de si extraordinaire & de si peu connu des gens du monde*]; Paul Ragueneau, *La Vie de la Mere Catherine de Saint Augustin, Religieuse Hospitaliere de la Misericorde de Quebec en la Nouvelle-France* (Paris, 1671), n.p.

¹³ Torres, [*N*]oticias, pp. 1–2 explains: "se expone a censura de sospechoso lo que en los Padres alaba el hijo por apasionado... siendo mi sacerdocio llave para desencerrarle..."; "V.M. es muy hijo de tal Madre, como hijo tenía mas frecuentes asistencias, y como confesor tendría mas interior noticia que ninguno, y así executará en el estado que profesa... y satisfacción a la obligación de su sangre..." There are other cases of clerics being ordered to write exemplary lives by diocesan, or more commonly, monastic superiors, usually with the goal of recording the institutional history of their order as well as lauding an individual member.

with his readers “the reasons that motivated [him] to bring to light” the story of his mother, Catalina de Jesús y San Francisco, citing the strict obligation of children “to honor and venerate their parents.” “The light of reason dictates it, human laws promote it, and divine precepts confirm it,” the Franciscan friar concluded.¹⁴

A fascinating web of family loyalties, biological and symbolic, informs the complex process by which the *Life* and “works” of the renowned holy woman Catterina Fieschi Adorna, better known as St Catherine of Genoa, came to be recorded. From the 1470s until her death in 1510, Catherine served as the spiritual leader of a coterie of laypersons and clerics devoted to serving the poor and sick in Genoa. Two of her closest collaborators were her confessor, Cattaneo Marabotto, and a pious lawyer named Ettore Vernazza, 23 years her junior. Catherine regarded and addressed Vernazza as her “son,” and he in turn called her his “mother.” After Catherine’s death, Marabotto and Vernazza continued to collaborate, compiling and distributing her many sayings and teachings. Manuscript versions of what came to be known as Catherine’s *Vita e Dottrina* circulated during the first decades of the 16th century; a preface to the edition eventually published in 1551 explained that the text had been “gathered together by two of her devout followers (her confessor and a spiritual son of hers).”¹⁵ Vernazza had asked Catherine to stand as godmother to his first daughter, Battista, born in 1497. Battista, who became an Augustinian canoness at the precocious age of 13, would later write the life of her exemplary father and would prove instrumental in the composition of her godmother’s most famous treatises, *Purgation and Purgatory* and *The Spiritual Dialogue*.¹⁶ Priestly father

¹⁴ *Las razones que motivaron al Author a sacar a luz esta historia... Estrechísima es la obligación... que para honrar y venerar a los padres, executa a los hijos. La luz de la razon lo dicta, leyes humanos lo persuaden, y preceptos Divinos lo confirman*; Juan Bernique, *Idea de Perfección y Virtudes. Vida de la V.M. y Sierva de Dios Catalina de Jesús y San Francisco* (Alcalá de Henares, 1693), n.p. For more on this relationship, see Lisa Vollendorf, *The Lives of Women: A New History of Inquisitional Spain* (Nashville, 2005), ch. 6.

¹⁵ *Raccolto dai divoti religiosi (suo Confessore e un figliulo suo spirituale)*; quoted in Friedrich von Hügel, *The Mystical Element in Religion as Studied in Saint Catherine of Genoa and Her Friends*, 2 vols (London, 1923), 1:415.

¹⁶ For the much-debated composition and publication history of these texts, see von Hügel *Saint Catherine of Genoa and Her Friends*, 1:407ff. In his introduction to the most recent English edition, Serge Hughes takes issue with von Hügel; see his Catherine of Genoa, *Purgation and Purgatory, The Spiritual Dialogue* (New York, 1979), pp. 1–67. A similar case is that of Paola Antonia Negri (1508–55), whose coterie of “figliuli spirituali” revered her as their “madre divina” or “madre maestra.” After Negri’s death, some of her followers collected and published her letters, along with an account of her life;

and daughter in confession, spiritual mother and son, godparent and godchild, biological father and daughter: all these relationships came into play in the construction of Catherine of Genoa as saintly model, mystic, and teacher.

The same bonds of “filial” loyalty and gratitude could inspire clerics to write the life narratives of beloved teachers or mentors. A fascinating case involved three “generations” of French Jesuits during the course of the 17th century. Between 1628 and 1631, Louis Lallemant (1587–1635) presented a series of lectures. His “disciples,” especially Jean Rigoleuc (1595–1658) and Jean-Joseph Surin (1600–65), took careful notes. Rigoleuc later gave his notes to his colleague or student Vincent Huby (1625–93). Pierre Champion (1632–1701) at last published this collection, known as Lallemant’s *Spiritual Doctrine*, along with a biographical account, in Paris in 1694. In a preface, Champion explained that he had acceded to the wishes of his own teacher, Huby, “another holy man whom we are bound in gratitude to mention . . . under whose influence it was that I undertook [these] little works. . . .” At Huby’s request, Champion also compiled the life and writings of Rigoleuc in 1686.¹⁷

Writing the lives of exemplary penitents also offered priests the opportunity to pay tribute to their native cities or regions. The title page of a hagiography first published in 1618 identifies its subject as “Doña María Vela, Cistercian nun of the Convent of Santa Ana of Avila,” and its author, “Doctor Miguel González Vaquero, her Confessor, native of the same city.” While the book’s opening chapter treats the holy woman’s “origins and birth,” Dr Vaquero, as he was known, devoted the first two folio pages to extolling her (and his) hometown. Surely, he proclaimed, “divine Providence” had wanted to “authorize and honour this city of Avila” by sending generations of noble lineages, valiant warriors and saintly women. His penitent, María Vela, represented

see Adriano Prosperi, “Dalle ‘divine madri’ ai ‘padri spirituali,’” in *Women and Men in Spiritual Culture, XIV–XVII Centuries: A Meeting of South and North*, ed. Elisja Schulte van Kessel (The Hague, 1986), pp. 71–90.

¹⁷ The effect that the older man had upon his protégé comes through more clearly in the original French: “un autre saint homme, que la reconnaissance demande que nous fassions aussi connaître à son tour. C’est la Père Vincent Huby, qui, par le pouvoir qu’il avait sur mon esprit, m’a engagé d’entreprendre les petits ouvrages. . . .”; *The Spiritual Doctrine of Father Louis Lallemant of the Society of Jesus* (Westminster, Md., 1946), pp. vii, 24. See also *La Vie et La Doctrine Spirituelle du Père Louis Lallemant de la Compagnie de Jésus* (Paris, 1959), pp. 41–42, 69. Another such case, this time among Spanish Jesuits, is that of Pedro de Ribadeneyra, with regard to Ignatius Loyola, and of Cristóbal López, with regard to Ribadeneyra; see Bilinkoff, “Many ‘Lives,’” pp. 180, 184–85, 190–91.

only the most recent chapter in Avila's long and distinguished sacred history.¹⁸ Failure to publicize the life of Barbe Acarie, André Duval insisted, would "deprive France of a very great honour and debase it, placing it below the other nations that have in our time been favoured by Heaven by such illustrious Saints" as Italy's Carlo Borromeo and Spain's Ignatius Loyola and Teresa of Avila.¹⁹

This sense of devotion to place could be especially intense among hagiographers from Europe's New World colonies, intent as they were upon establishing the Christian credentials of both the land and its people. The case of Mariana Paredes y Flores, born in Quito, in modern-day Ecuador, in 1618, offers just one example among many. When epidemics broke out and an earthquake threatened in the spring of 1645, the deeply pious and ascetic *beata*, who had taken the religious name Mariana de Jesús, offered her own life as expiation for the sins of her countrymen. She died two months later, at the age of 27. Her confessor, Alonso de Rojas, preached a sermon at her packed funeral, publishing it the following year. *Quiteños*, he proclaimed, ought to "be glad that this Servant of God blessed [the city] with her assistance," thankful that she offered herself as a "holy sacrifice" for the well-being of the *patria*.²⁰

This effort to forge a connection between holy woman and homeland was later taken even further by Jacinto Morán de Butrón, a Jesuit and native of the region. In composing an exuberant hagiography of Mariana, he used the occasion to sing the praises of Quito: its mineral wealth, its agricultural products, its architecture, its many learned and devout citizens. Celebrating Mariana de Jesús as "The Lily of Quito" allowed

¹⁸ Vaquero explained: "La divina Providencia que quiso autorizar y honrar esta ciudad de Avila con tanta nobleza de linajes, para que de ella naciesen hombres valerosos...quiso también enriquecerla en nuestros tiempos de mujeres fuertes...del espíritu..."; I use here the edition published in Madrid in 1674: Miguel González Vaquero, *La muger fuerte...La vida de D. Maria Vela...*, fols 1r–v. As Richard Kagan points out, works "celebrating, and indeed magnifying the importance of the hometown" were extremely popular in Spain at this time; see his "Clio and the Crown: Writing History in Habsburg Spain," in *Spain, Europe and the Atlantic World: Essays in Honour of John H. Elliott*, ed. Richard L. Kagan and Geoffrey Parker (Cambridge, 1995), pp. 73–99.

¹⁹ "...et priveroit-on la France d'un tres grand honneur, et la ravaleroit-on par ce moyen au dessous des autres nations, qui ont esté en ce siecle favorisées du Ciel des Saints fort illustres; comme Italie des saint Charles Borromée, et l'Espagne du bien-hereux Ignace, fondateur de l'Order de la Compagnie de Jesus, et la bien-hereuse mere Terese; Duval, *La Vie admirable*, p. xxii.

²⁰ Morgan, "'Just Like Rosa,'" p. 285 quotes: "esta República, no solo debe estar gozosa, porque la ilustró esta sierva de Dios con su asistencia...el sacrificio sagrado ofrecido por la salud de vuestra Patria..."

a Creole priest like Morán to express pride in his American roots while performing his pastoral duty to promote a saintly exemplar.²¹

Thus did confessors have a variety of motivations, personal and traditional, for making public the lives of exemplary penitents. But only a small number became authors. I suggest that the ones who did had genuine literary, as well as religious, vocations. Indeed their very sense of their missions as priests and their impulses to express themselves in writing may have been closely related, the one put to the service of the other.

One indication of a distinct literary bent on the part of certain clerics was the sheer size of their literary output. Far from representing a chance, one-time occurrence, many authors wrote more than one hagiographical text; some were prolific writers generally.

In a preface to the *Life* of his mentor, Ignatius Loyola, first published in 1572, Pedro de Ribadeneyra protested that he lacked sufficient strength or talent to produce this work but that he had bowed to the requests of his superiors in the Society of Jesus. Despite this recourse to a humility topos, typical of his time and humanistic training, Ribadeneyra had a long and productive career as a writer on a wide range of topics and in a variety of genres: political treatises, devotional works, and translations of Latin texts. And he was especially active as a hagiographer, recording the lives of several early Jesuit leaders, including Loyola, and of two pious lay noblewomen, as well as authoring a popular compilation of traditional saints' lives or *Flos Sanctorum*.²² Serafino Razzi wrote the *Vita* of his penitent Caterina de'Ricci (d. 1590), but also composed hagiographies of at least seven other figures, male and female, and published two collections of biographical sketches lauding exemplary members of the Dominican order, of which he was himself a friar.²³

²¹ As Ronald Morgan comments, "writing the life of Mariana de Jesús becomes [for Morán] a method of celebrating the merits of Quito"; *ibid.*, pp. 278–79, 292–93.

²² Bilinkoff, "Many 'Lives.'" Ribadeneyra also wrote his own autobiography.

²³ See the introduction by Guglielmo M. di Agresti to Serafino Razzi, *Vita di Santa Caterina de'Ricci* (1594; Florence, 1965). "Reportorio dei testi a stampa," in *Donna, disciplina, creanza cristiana dal XV al XVII secolo*, ed. Gabriella Zarri (Rome, 1996), pp. 654–57. As a "figliuolo spirituale" of Caterina, Razzi both gave and received spiritual direction in this relationship. Anna Scattigno, "'Carissimo figliolo in Cristo.' Direzione spirituale e mediazione sociale nell'epistolario di Caterina de'Ricci (1542–1590)," in *Ragnatele di rapporti: patronage e reti di relazione nella storia delle donne*, ed. Lucia Ferrante, Maura Palazzi, and Gianna Pomata (Turin, 1988), pp. 219–39. A somewhat different, but no less interesting, case is that of the pious layman Miguel Batista de Lanuza, who,

Many of these active clerical authors knew one another and referred to one another's works. Virgilio Cepari and Vincenzo Puccini both directed Maria Maddalena de'Pazzi, conferred together on occasion, and both published accounts of her life. In his 1609 biography, Puccini recounted how nine years earlier the nun had been granted a vision of the recently deceased Luigi (Alyosius) Gonzaga in heaven and had ecstatically exclaimed, "Luigi is a great Saint." Interestingly, one year earlier, in 1608, Cepari had published a life of Gonzaga. In reporting this incident, Puccini underscored the mystical holiness of his penitent Maria Maddalena but also succeeded in affirming the presence of saints among the members of the Society of Jesus, the group to which he, Cepari, and Gonzaga all belonged. And he may well have been calling his readers' attention to his colleague's book.²⁴

Like authors of all sorts, hagiographers sought precedents for their literary efforts. Scholars have noted how Catherine of Siena, the 14th-century Dominican tertiary, church reformer, and mystic, came to function as a powerful role model for aspiring holy women throughout Catholic Europe and, later, its colonies. In like manner, Raymond of Capua, Catherine's confessor and the author of the popular and influential Latin account of her life and miracles, could serve as an authorizing precedent for aspiring confessor-hagiographers. When the Mercedarian friar Juan Bautista del Santísimo Sacramento set down the life of Mariana de Jesús around 1616, he located himself within a genealogy of zealous and *writing* confessors. Juan Bautista explained that he fashioned a written record of his penitent's spoken confidences "in the same way as did Father Friar Raymond of Capua," and insisted that "the same thing can be seen and read about in many other chronicles and histories."²⁵ How many clerical promoters, as they proclaimed their

between 1638 and 1659, wrote the lives of at least six Spanish Discalced Carmelite nuns; see Isabelle Poutrin, *Le voile et la plume: Autobiographie et sainteté féminine dans l'Espagne moderne* (Madrid, 1995), pp. 217, 228, 258–59, 439.

²⁴ Puccini, *Vita della Veneranda Madre Suor M. Maddalena de'Pazzi Fiorentina*, pp. 251–55. Cepari wrote at least two other lives besides those of Gonzaga and Ricci; see "Reportorio," p. 487. Serafino Razzi's brother, the Camaldolese monk Silvano Razzi, was also an active hagiographer. In addition to the lives of individuals, he published the popular six-volume *Delle vite delle donne illustri per santità* between 1595 and 1606; *ibid.*, pp. 657–58.

²⁵ ...a la manera que el Padre Fray Raimundo de Capua, Confesor que fue de la bienaventurada Santa Catalina de Sena... lo mismo se ve y leemos en otras muchas Crónicas y Historias; quoted in Elías Gómez Domínguez, *Beata Mariana de Jesús, mercedaria madrileña* (Rome, 1991), pp. 87–88. Intriguingly, during the same years in which he translated Raymond of Capua's

spiritual daughters “new” Catherines of Siena, imagined themselves “new” Raymonds of Capua.²⁶

Finally, some clerics wrote because they felt compelled by a sense of destiny, or divine calling. Juan Bernique recalled a childhood spent with his mother, the future Franciscan tertiary Catalina de Jesús y San Francisco. When he was nine or ten years old she

ordered me to read in the presence of my sisters the life of Doña María de Pol, written by Father Marcos de Torres, SJ, her son, and when I marvelled at the mystery by which a son could be the author of the virtues of his [own] mother, she replied that the same was going to happen to [me], jokingly calling me several times “her historian,” and whenever she noticed me lukewarm in my studies, she would coax me out of my laziness, saying to me, “There’s a good plan in store for you, to be my chronicler. . . .”

While Bernique may have succumbed to his mother’s forceful personality, he represented the hagiographical account he published in 1693 as due to the workings of “Heaven” and the fulfilment of the “prophecy” that had helped to determine the course of his life.²⁷

Legenda Maior into Castilian, Antonio de la Peña fervently promoted his penitent, María de Santo Domingo, like Catherine, a charismatic Dominican tertiary of humble birth. In his introduction to the translation he defended the practice of narrating the lives of saintly women; see his *La vida de la bienaventurada sancta Caterina de Sena* (Alcalá de Henares, 1511), n.p. See also Jodi Bilinkoff, “A Peasant Visionary and Her Audience in Early Sixteenth-Century Spain,” *Studia Mystica* 18 (1997), 36–59.

²⁶ Male promoters explicitly compared their penitents with Catherine of Siena (and implicitly, themselves with Raymond of Capua) in the cases of María Maddalena de’Pazzi, Catherine of Genoa, María Vela, Catherine de Saint Augustin, Mariana de Jesús (of Madrid), Mariana de Jesús (of Quito), Catalina de Jesús y San Francisco, and Caterina de’Ricci discussed above. To this list we may add Rose of Lima (d. 1617) and the Portuguese holy woman Isabel de Miranda (d. 1610), just to show the extraordinary breadth and longevity of this cultural construct. See Kathleen A. Myers, *Neither Saints Nor Sinners: Writing the Lives of Women in Spanish America* (New York, 2003), ch. 1. Maria de Lurdes Correia Fernandes, “A construção da santidade nos finais do século XVI. O caso de Isabel de Miranda, teceideira, viúva e ‘santa’ (c.1539–1610),” in *Actas do Colóquio Internacional Piedade Popular: Sociabilidades, representações, espiritualidades* (Lisbon, 1999), pp. 243–72.

²⁷ Bernique, “Prólogo al Lector,” n.p., explains: “Siendo yo de edad nueve o diez años me mando leyese en presencia de mis hermanas la vida de la V. Señora Doña María de Pol, escrita por el Padre Marcos de Torres, S.J., hijo suyo, y admirando yo el misterio de que un hijo suyo oviese sido el escritor de las virtudes de su madre, llamandome con grazejo repetidas vezes su historiador, y aun quando me advertia tibio en los estudios, estimulaba mi floxedad, diciendome: buena traza llevas de ser mi Coronista... [this book] ha dispuesto el Cielo, acaso por dar cumplimento a esta profecía.”

Another example of how both autobiographical and hagiographical expression could be understood as divinely inspired comes from the Castilian city of Segovia during the first decades of the 18th century. In 1727, María Quintana, a one-time “sinner” who had become an extreme ascetic and mystic, heard God issue a direct command: “‘Daughter, tell your confessor to write your life.’” María duly reported this to her confessor at the time, the somewhat timid and elderly Pedro de Arias, but he balked at the idea. The priest hesitated in part because he was unsure of the origin of María’s voices—were they celestial or diabolical?—, the classic theological dilemma of the period. But he also gave personal reasons for his unwillingness, citing his “lack of talent and of time and the great difficulty he had in writing.” Pedro de Arias was not, it would seem, cut out to be a hagiographer.²⁸

This role would fall to the man who directed María during the two years leading up to her death in 1734, José Esteban Noriega. In the biography he published three years later, the priest protested his deficiencies as well, stating “I am well aware of my ignorance, lack of passion (*tibieza*, literally: lukewarmness), and lack of experience, especially in these matters.” He managed to overcome these stated feelings of inadequacy, however, as he went on to produce 675 pages of densely packed prose.²⁹ The sense that he was the unnamed confessor designated by God to record María’s life no doubt helped to propel José Esteban Noriega from confessor to author.

Watching the Hagiographer in Action

Inspired, then, by one or more motivating factors, and compelled by a vocation for the written word, many confessors resolved to record the

²⁸ “Estando un día, despues de comulgar, recogida... me dixo Su Magestad ‘Hija, di a tu Confesor, que escriba tu vida’... Pero que no determinaba a hazerlo [write her life], por falta de talento, y de tiempo, y la mucha dificultad que tenia, en escribir”; Sánchez Ortega, *Confesión y trayectoria femenina*, pp. 272, 274; see also discussion at 271–85. For the debates over the proper “discernment of spirits” in the direction of religious women, see Alison P. Weber, “Between Ecstasy and Exorcism: Religious Negotiation in Sixteenth-Century Spain,” *Journal of Medieval and Renaissance Studies* 23 (1993), 221–34; and Moshe Sluhovsky, *Believe Not Every Spirit: Possession, Mysticism, and Discernment in Early Modern Catholicism* (Chicago, 2007).

²⁹ *Conozco mi ignorancia, tibieza, y falta de experiencia, especialmente en estas materias*. Noriega authored at least one other hagiography and, according to some sources, was an avid student of history. See Sánchez Ortega, *Confesión y trayectoria femenina*, p. 52; also 37–44, 50–58, 276–85.

lives of their exemplary penitents. Biographers now, as well as spiritual directors, they embarked upon the process of collecting data, documenting the miraculous and the mundane, even while their penitents were still alive. What methods did they employ?

Like modern-day journalists they made every effort to interview and observe their subjects, and their positions as confessors often gave them ample opportunity. The Mercedarian Juan Bautista del Santísimo Sacramento added his own reminiscences to the spiritual autobiography of the Madrid *beata* Mariana de Jesús. "I record and refer here [to the things] that I remember the Servant of God said to me," he explained, "I as her confessor having asked her about certain matters for the glory of God." Miguel González Vaquero recalled the "many times [he] used to watch" the Cistercian nun and mystic Doña María Vela during the fifteen years that he served as her spiritual guide.³⁰

Describing the gift of prophecy bestowed upon his penitent Isabel de Jesús, Manuel de Paredes mentioned a prediction she "told and warned [him] about" on 1 January 1676. Nine years later he assured his readers that all these things had come to pass, just as Isabel had foretold, "down to the last detail," [*al pie de la letra*], a comment that suggests that he took notes on the earlier occasion. María Quintana also "dictated" many of her supernatural experiences to José Esteban Noriega, although, the priest ruefully admitted, there was probably "much more that even she herself did not know how to put into words."³¹

The somewhat unusual case of a priest and an exemplary male penitent vividly illustrates the data collection involved in the hagiographical enterprise. Francisco Losa emigrated to New Spain from Castile around 1566. In 1578, after more than 10 years as curate and almoner at the

³⁰ *Voy poniendo y refiriendo aquí como me voy acordando habérmelo dicho esta Sierva de Dios, preguntándole algunas cosas para gloria de Dios, como su confesor...*; Gómez, *Beata Mariana de Jesús*, p. 125; and *Muchas veces estaba yo mirando en ella...*; González Vaquero, *La mujer fuerte*, fols 17v–18r. From at least the 13th century on, the imperative of testifying to a deceased penitent's saintly virtues in effect exempted confessors from maintaining the "seal of confession"; see Alexander Murray, "Confession as a Historical Source in the Thirteenth Century," in *The Writing of History in the Middle Ages: Essays Presented to Richard William Southern*, ed. R. H. C. Davis and J. M. Wallace-Hadrill (Oxford, 1981), pp. 275–322, esp. 283.

³¹ *Tesoro escondido*, Prólogo, n.p. reports: "...ayiendome dicho y avisado de ello primero día del mes de Enero del año de mil y seiscientos y setenta y seis...que he visto complidas al pie de la letra..."; and Sánchez Ortega, *Confesión y trayectoria femenina*, p. 279, records: "Y aunque es mucho lo que en este punto dexó dictado, todavía me persuado, fue sin comparación mucho mas, lo que ella misma no supo dezir." Or, could it be that she chose not to reveal certain things to Noriega?

Cathedral of Mexico City, Losa was sent to investigate a strange wandering hermit named Gregorio López. While many admired López's life of intense prayer and ascetic denial, others suspected the Madrid native of holding heterodox beliefs.³²

Losa met and conversed with López and became convinced not only that the layman was entirely orthodox but also that he was endowed with divine graces, that he was a saint. By 1589, the priest had resigned his curacy, renounced his benefice, and moved with López to a hermitage. The two spent the next seven years "living in the same house, eating at the same table, and sleeping in the same chamber," until the holy man's death in 1596.³³

During those years, Losa busied himself preparing the biography of Gregorio López. For example, he carried out numerous interviews. During their frequent "chats" [*pláticas*] he asked the hermit questions about his family origins, his decision to emigrate to the New World, his preferred reading and penitential exercises, and many other topics. He also listened in as López gave counsel to his numerous devotees. The hagiographer could be as persistent as he was precise in his record-keeping. Once, Losa remembered, he "importune[d] him very much" to speak of his sufferings. "After many days" López finally consented, going on to "utter somewhat of that which did inwardly pass between God and him." This unexpected revelation left the priest so "amazed" that "presently [he] wrote down these words which he has said, being March in the year 1591."³⁴

³² Antonio Rubial García, *La santidad controvertida: Hagiografía y conciencia criolla alrededor de los venerables no canonizados de Nueva España* (Mexico City, 1999), pp. 93–128.

³³ I treat the relationship between Losa and López briefly in "Navigating the Waves (of Devotion): Toward a Gendered Analysis of Early Modern Catholicism," in *Crossing Boundaries: Attending to Early Modern Women*, ed. Jane Donawerth and Adele Seeff (Newark, Del., 2000), pp. 161–72; and more extensively in "Francisco Losa and Gregorio López: Spiritual Friendship and Identity Formation on the New Spain Frontier," in *Colonial Saints: Discovering the Holy in Americas, 1500–1800*, ed. Allan Greer and Jodi Bilinkoff (New York, 2003), pp. 115–28.

³⁴ Francisco Losa, *La vida que Hizo el Siervo de Dios Gregorio Lopez, en algunas lugares de esta Nueva España...* (Mexico City, 1613). For English quotations I use the translation made in Paris, 1638: *The Life of Gregory Lopes that Great Servant of God...*; a facsimile edition is available as vol. 3 in the series *English Recusant Literature, 1558–1640* (Menston, UK, 1969), pp. 240–42. See also Losa, *Vida*, fols 1r–v, 4r, 8r–v, 9r–v, 116v–119v; and Losa, *Life*, in *English Recusant Literature*, pp. 101–02, 165–66. Rubial García, *La santidad controvertida*, noticing how Losa was able to recall specific dates "con gran exactitud," suggests that he carried with him "un diario," p. 101.

When priests could not query penitents directly, they sometimes turned to surrogates or helpers. The well-known Jesuit Luis de la Puente sent a young girl to take down the testimony of the Valladolid holy woman Doña Marina de Escobar (d. 1633), information he later used to construct her biography. The divinely sent “gifts” and “spiritual affects” [*regalos e sentimientos espirituales*] penned by the Poor Clare Ana de la Cruz, the widowed Countess of Feria, were first read and approved by one confessor, then passed on to another, Martín de Roa, who transcribed them and incorporated them into the hagiography he published in Córdoba in 1604. Timoteo de’Ricci, chaplain to the Dominican nuns of San Vincenzo in Prato, worked closely with the sister designated as Caterina de’Ricci’s “guardian” [*custode*] to ensure that the ecstatic nun wrote down “the many marvelous and truly holy things” she experienced. This spiritual diary was later utilized by Friar Timoteo’s colleague—and Caterina’s first biographer—Serafino Razzi.³⁵

Hagiographers also frequently consulted with their penitent’s previous confessors, or, if this was not possible, perused their notes. We have already seen how Martín de Roa and Serafino Razzi used transcriptions prepared by their predecessors in preparing their biographies of Ana de la Cruz and Caterina de’Ricci, respectively. Juan Bernique carefully described his sources for memorializing his mother Catalina de Jesús y San Francisco. The Franciscan singled out for special mention the written responses to his queries he had received from Friar Damián Cornejo, “who treated [Catalina] for many years, confessed her at the end of her life, and in whose care [*en cuyos manos*] she died....” Another biological son turned priestly biographer, Marcos Torres, also acknowledged his debt to the insights that “some of her confessors communicated to [him]” when composing the life of Doña María de Pol.³⁶

Miguel González Vaquero depended heavily on the advice of one of his predecessors in directing María Vela, and on the writings of others in constructing her hagiography. He described how the Jesuit Francisco Salcedo had ordered María to record all the “supernatural gifts” she had received and then kept these “mercies” among his papers. Salcedo’s

³⁵ Luis de la Puente, *Vida maravillosa de la Venerable Virgen Doña Marina de Escobar...* (Madrid, 1665); Maria de Lurdes Correia Fernandes, “Uma clarissa ilustre do século XVI: Ana Ponce de León, Condessa de Féria e monja de Santa Clara de Montilla,” in *Las Clarisas en España y Portugal: congreso internacional, Salamanca, 20–25 de septiembre de 1993: actas*, 2 vols in 4 (Madrid, 1994), 1:331–40; and Scattigno, “‘Carissimo figliuolo in Cristo,’” pp. 219ff. Timoteo de’Ricci was Caterina’s uncle.

³⁶ Bernique, *Idea de Perfección*, “Prólogo,” n.p.; Torres, [*N*]oticias, p. 6.

notes later came into Vaquero's possession, and, as he explained to his readers, he "drew from them in order to [write] this history."³⁷ In his 1621 *Life* of Barbe Acarie, André Duval cited the pious laywoman's first vision of St Teresa of Avila, which she experienced while confessing to a Dom Beaucousin. Duval lamented his inability to detail the precise nature of this vision "since on account of the death of the director there is no way of finding out." His remark suggests that, had his predecessor still been alive, Duval would have certainly pressed him for information about their exemplary penitent.³⁸

Indeed, priestly authors surveyed acquaintances and witnesses of all sorts in their quest for information and authorization. Juan Bernique, who, as the son of Catalina de Jesús y San Francisco, could not have had first-hand knowledge of her early life, diligently sought out "the testimony of those who saw and heard her."³⁹ Information about Gregorio López that Francisco Losa could not glean directly from his subject he set about compiling from other sources. He talked to priests and others who had known the hermit during his first years in New Spain. He solicited López's letters and other examples of his writing. The dozens of anecdotes about the holy man he collected, Losa later assured readers, came on good authority, from "so many witnesses, so worthy of credit, and such as none can [object to]. . . ."⁴⁰

³⁷ González Vaquero, *La muger fuerte*, fol. 45v. For the complex interactions between María Vela and her various confessors, see Susan Laningham, "Maladies up Her Sleeve? Clerical Interpretation of a Suffering Female Body in Counter-Reformation Spain," *Early Modern Women, An Interdisciplinary Journal* 1 (2006), 69–97.

³⁸ Duval, *La Vie admirable*, pp. 120–21: "Dire la qualité de cette vision, si elle fut intellectuelle ou sensible, nous ne le pouvons pas, parce que son directeur le Père Dom Beaucousin était mort, il n'y a plus moyen de le savoir. . . ."; The translation of this passage is that of Lancelot C. Sheppard in his *Barbe Acarie: Wife and Mystic* (New York, 1953), pp. 89–90. Duval did, in fact, consult previous confessors of Acarie, either in person, or through their writings; see, for example, pp. 97–98, 330–43, 365, 421, 509 (and Beaucousin, while he was still alive). For Acarie and her circle, see Barbara B. Diefendorf, *From Penitence to Charity: Pious Women and the Catholic Reformation in Paris* (New York, 2004) ch. 3. For other cases of confessor-hagiographers conferring with their predecessors, see Ribadeneyra, *Vida de Doña Estefanía Manrique*, fols 2r, 15r; Puccini, *Vita della Veneranda Madre Suor M. Maddalena de'Pazzi Fiorentina*, pp. 209, 248–49; and Ragueneau, *La Vie de la Mere Catherine de Saint Augustin*, pp. 356–58.

³⁹ Bernique, *Idea de Perfección*, "Prólogo," n.p.: "...noticias administradoras de testigos de vista y de lo que por palabra y por escrito me ha participado. . . ."

⁴⁰ Losa, *Life of Gregory Lopes*, p. 141; see also pp. 111–12, 112–16ff., 122, 143–49, 220–22; Losa, *Vida*, fols 1r–v, 4r, 8r, and 22r; and Rubial García, *La santidad controvertida*, pp. 106–07. See also Ribadeneyra, *Vida de Doña Estefanía Manrique*, fols 2r–v, for his interviews with servants in Estefanía Manrique's household.

In one of the most fascinating—and thorough—instances of this sort, confessors of Maria Maddalena de’Pazzi polled all 60 nuns of the convent of Santa Maria degli Angeli regarding the nature and veracity of her “raptures and revelations” [*ratti ed intelligenzie*]. The Jesuit Virgilio Cepari oversaw the depositions [*attestazioni*] taken in September, 1601, six years before the mystic’s death, and his colleague Vincenzo Puccini, oversaw those of August 1607, three months later. On both occasions, the testimonies were carefully witnessed, notarized, and signed by each sister “in [her] own hand” [*di mia propria mano*]. Many swore further that they had been present during Maria Maddalena’s ecstasies and apprehended these marvels “with their own eyes and ears” [*con i propri occhi visto e sentito con i propri orecchi*].⁴¹

Later, both Cepari and Puccini wrote hagiographies of their extraordinary spiritual daughter. In a preface to the *Life* he published in 1609, Puccini insisted upon the accuracy of the details he narrated, for, he pointed out, they had been “verified, and that upon oath, by these other religious women who lived with her, in [the] presence of their spiritual magistrates who had authority to take full information thereof.” The Jesuit also apparently interviewed Maria Maddalena’s convent sisters about miraculous cures effected by the Servant of God. Puccini related numerous accounts of thaumaturgic intervention, often concluding with phrases such as, “This she herself who is yet living has testified upon her oath.”⁴²

Finally, confessor-hagiographers made extensive, and sometimes exclusive, use of the writings of the exemplary penitents themselves. The same spiritual directors who ordered their female penitents to record their autobiographies or memoirs were frequently the ones responsible for publishing them after the women’s death. Priests often would append their own reminiscences to these autobiographies or compose biographies that featured lengthy excerpts from the women’s accounts.

But many priestly biographers zealously collected everything written by their exemplary subjects, documents that could serve as source

⁴¹ These *attestazioni* are transcribed and reproduced in facsimile in *Tutte le Opere di Santa Maria Maddalena de’Pazzi*, 7 vols (Florence, 1960–67) 4:300–12, also 3:413ff. The depositions were to serve multiple purposes: to affirm the orthodoxy of Maria Maddalena’s pronouncements, and set the stage for beatification hearings, as well as to collect information later used in hagiographies.

⁴² Puccini, *Vita della Veneranda Madre Suor M. Maddalena de’Pazzi Fiorentina*, pp. 7, 98–99; see also 9, 11, 28, 81ff. André Duval also collected testimonies from Acarie’s convent sisters (*La Vie admirable*, pp. 549–59, 580ff), although in a much less systematic way.

material for hagiographies, testimony in beatification and canonization proceedings, and as cherished relics. Francisco Losa quoted from at least three letters written by Gregorio López in his *Life*. The priest lauded the hermit for his prudent use of language, so different from that of the gaudy and verbose courtiers of his day. López, his hagiographer proclaimed, “did not only keep silence in speaking but also in writing, for he... did not return an answer unless charity or necessity did require it... and then he did only use those words which were necessary for the business.” Losa could speak with authority on this point, assuring his readers, “I have many of his letters in my hands...”⁴³

This question of possession or access was apparently an important one for these clerical authors, a way of underscoring their positions as trusted confidants of the Servants of God during their lives, and guardians of their legacies after their deaths. Thus Juan Bernique explained how, in presenting the life of Catalina de Jesús y San Francisco, he “made faithful transcriptions of the papers and letters that she wrote out of obedience, and that have ended up in my possession” [*que en mi poder paran*]. Marcos Torres likewise described how he had kept all the letters he had received from his mother, Doña María de Pol, “among [his] papers” [*entre mis papeles*], a quantity large enough to be published separately as a book of spiritual advice, he asserted.⁴⁴

After the death of Doña Estefanía Manrique de Castilla, Pedro de Ribadeneyra obtained access to a collection of prayers, spiritual reflections, and the like that the pious noblewoman had guarded so closely that not even her confessors had been aware of its existence. The noted Jesuit then made extensive use of “her private papers” [*sus papeles secretos*] in composing the narrative of her life. Manuel de Paredes also seems to have systematically mined the papers of his penitent Isabel de Jesús; he cited some poems or songs [*canciones*] penned by the Carmelite tertiary that he “ran across among her papers” [*las topé entre sus papeles*].⁴⁵

⁴³ Losa, *Life of Gregory Lopes*, pp. 178–79, 272–73; see also Losa, *Vida*, fols 4r–5r.

⁴⁴ Bernique, *Idea de Perfección*, “Prólogo,” n.p.; Torres, [*N*]oticias, pp. 117, 147. For another instance of spiritual letters exchanged between mother and son, see *Marie de l’Incarnation: Entre mère et fils: le dialogue des vocations*, ed. Raymond Brodeur (Montréal, 2000).

⁴⁵ Ribadeneyra, *Vida de Doña Estefanía Manrique*, fols 2r–v, 8v, 11v; Paredes, *Tesoro escondido*, Prólogo, n.p. The authorship of these poems is apparently in question; see Velasco, *Demons, Nausea, and Resistance*, pp. 7–10; and see 69–79 for discussion of how Isabel, worried that her autobiographical writings could fall into the hands of the Inquisition, handed in each notebook to Paredes for safekeeping as she finished.

Like modern-day biographers or journalists, then, early modern hagiographers used a variety of methods in documenting the lives of their spiritually gifted penitents. They observed, interviewed, and queried their subjects during their lives, as well as their acquaintances after their deaths. They consulted, when possible, with former confessors. They took the testimony of witnesses, sometimes informally, sometimes in a very systematic and legalistic fashion. And they collected—some might say, appropriated—letters, memoirs, and other papers produced by their penitents, a process often begun while the subject was still alive, and accelerated after her or his death. Motivated to write, and equipped with plenty of biographical data, these confessors were now ready to become hagiographers. They memorialized the lives of the women (and sometimes men) whom they had directed, and who had so profoundly touched their own lives, and, in the process, underscored the richness and complexity of the penitential enterprise.

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